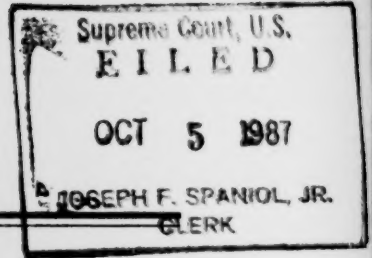


87-577

No.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

ARDEN A. ANDERSON, *et al.*,
Petitioners,

vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS OF ALABAMA**

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QUESTIONS PRESENTED

1. Whether a property owner whose minerals are forcibly pooled through administrative unitization proceedings has a 14th Amendment due process right to compulsory discovery of documents relevant and material to a just allocation of the unit interests?

2. Whether the appellate court erred in holding that the administrative board's refusal to subpoena specific documents did not violate petitioners' due process rights because the production of the documents "...would not necessarily have changed the Board's decision."

LIST OF PARTIES

This petition grows out of an administrative proceeding in which over four thousand parties were noticed as being affected. On appeal to the Circuit Court of Mobile County, all of these parties were again noticed as required by Alabama statute. On appeal from the Circuit Court to the Court of Civil Appeals of Alabama, the Appellants, Cross-Appellants, Appellees and Cross-Appellees were as follows:

Appellants and Cross-Appellees:

The State Oil and Gas Board of Alabama¹

Getty Oil Company

Paul M. Brown, et al.²

Exxon Corporation³

George Radcliff

Appellees and Cross-Appellants:

Arden A. Anderson, et al.⁴

Hatters Alabama Company, et al.⁵

Petitioners herein are Arden A. Anderson, et al., and all others are named as Respondents. The interest of Respondents, Hatters Alabama Company, et al., have been aligned with Petitioners in all the earlier proceedings.

¹ Including its chairman and members in their official capacities, Dr. Ralph Adams, Matthew S. Metcalfe (successor to Henry A. Leslie) and Gaines C. McCorquodale.

² Paul M. Brown; Paul H. Elkins; Eve Adams; Allen Abrams; Paul G. Abrams; Leonora Abrams; Frances F. Brown; Maxine Elkins; Mel Elkins; Judith A. Elkins; Frances W. Elkins; Jack Elkins; Etta Friedman; Samuel A. Friedman; Bobette B. Friedman; Lowell J. Friedman; Jack Goldfarb; Meyer David Goldfarb; Leonora Goldfarb; Mit-

chell Goldfarb; Daniel Goldfarb; Shelley R. Goldfarb; Ralph Gordon; Susan K. Gordon; Edna A. Gwosdow; Elizabeth L. Kahn; Rose F. Kaplan; Peter Klein; Nina Klein; Stephen H. Klein; Harry Klein; Peggy Klein; Paul May; Wallace Musoff; Lynn Rittenband; David N. Stahl, Jr.; Ruth G. Stahl; Marc L. Peterzell, as Trustee of the Paulette May Hertz Trust; Sidney Gelfand, as Trustee of "The Sidney William and Lila Gelfand Trust"; Paul H. Elkins, Judith A. Elkins and Sidney Gelfand, as Trustees under the Trust for the Benefit of Lisanne Elkins; Paul A. Elkins and Sidney Gelfand, as Trustees under the Trust for the Benefit of David A. Elkins; Nina Klein and Peter Klein, as Trustees under that certain Trust entitled "Klein Children's Trust"; Hazel Hinson Butler; the Board of School Commissioners of Mobile County, Alabama acting through their Board; Howard F. Mathis, III as Member; Norman G. Cox, as Member; Ruth F. Drago, as Member; Dr. Robert W. Gaillard, as Member; and Judith A. McCain, as Member.

³ Though not noticed as Appellant or Appellee, Exxon Corporation briefed and argued as Appellant.

⁴ Arden A. Anderson, Dominex, Inc., Godfrey, Mongoven, & Carlisle, J. B. Johnston, Jr., Louis Mullen, C. E. Locklin, Jr., Hayes Martin, Emile A. Meyer, Jr., Fred D. Meyer, I. H. Northrop, Jr., R. C. Northrop, I. H. Northrop, Sr., Vonceil Northrop, Ted. J. Ouzts, Ralph Abrahamsen, James C. Bassett, Garwood A. Braun, Kelly Van Brock, Cecil Ott Carraway, Carl D. Cassels, Jewell M. Cassels, Leon Cassels, Jessie Clay Cogburn, Jr., Robert A. Cogburn, Louise P. Cogburn, Grace Dansby, Sherril Dansby, David S. Ferguson, Verlyn M. Giles, Ward G. Godfrey, Jr., Harold Goldstein, Julia Goldstein, Michael Granger, Jane Granger, Donald E. Grant, James C. Griffin, H. Finn Groover, Jr., Patricia Harvey, Robert M. Hoffman, Eric H. Johnson, Roger Kaufman, J. D. Boone Duersteiner, Albert Lawton Langford, George Robertson Langford, Jr., Paul Robert Larson, Richard M. Lee, Ryals E. Lee, Robert B. Lester, John R. Lewis, Ellen P. Lewis, Richard B. Locher, Sr., Donald E. Lonhart, Sanford B. Lovingood, Stephen R. Lowry, MAF Partnership, Sarah C. Shaw, Clifford K. Madsen, Mary K. Madsen, Robert Andrew Miller, Earl W. Montgomery, Dale K. Ouzts, William M. Parker, Robert T. Peters, Jr., CT Partnership, Jimmy T. Patronis, J. M. Perkins, Ralph F. Pigott, Willie A. Pigott, Alvord Pitts, Zelma Pitts, Martha D. Pitts, James Edwin Pitts, C. J. Porter, Marion W. Porter, Stanley Bruce Powell, John H. Quinn, Leo Rich, Rodney L. Rich, Restaurant Accounting & Management, Inc., R. Gary Shields, George Francis Slade, Derwin B. Smith, II, Kathryn Smith Trust, 1965, Ronald C. Smith, E. Ray Solomon, Norman F. Spafford, M.D., Daniel C. Spr-

inger, Fred L. Standley, James Don Stockton, J. Daniel Stone, Gerald P. Tinney, Daniel W. Toohey, Harry M. Walborsky, Paula L. Walborsky, William C. Webb, George H. Weilder, Lawrence Leroy Wells, Harold D. Wildkins, Jr., James O. Williams, Connie D. Smith, Iris Lafaye Smith, Jeanna C. Smith, Lewie F. Smith, Lewie J. Smith, Sharon L. Smith, J. M. Duvall, Dan McKenzie, Diamond Oil International (successor to Amax Petroleum Corporation and Britoil Ventures, Inc.).

* Hatters Alabama Company, LeBoc Mobile Company and Sabine Corporation.

5(a) Getty Oil Company is a wholly owned subsidiary of Texaco Inc. which has the following affiliates and other subsidiaries:

- Texaco U.S.A.
- Arabian American Oil Company
- Aramco Services Company
- Caltex Petroleum Corporation
- Deutsche Texaco A.G.
- Texaco Africa Limited
- S. A. Texaco Belgium N.V.
- Texaco Brasil S.A. Produtos De Petroleo
- Texaco Butadiene Company
- Texaco Canada Inc.
- Texaco-Cities Service Pipe Line Company
- Texas-New Mexico Pipe Line Company
- Kaw Pipe Line Company
- Texaco Chemical Company
- Texaco Development Corporation
- Texaco Guatemala Inc.
- Texaco Europe
- Texaco Limited
- Texaco Latin America/West Africa
- Texaco Middle East/Far East
- Texaco Panama Inc.
- Texaco Puerto Rico Inc.
- Texaco Services (Europe) Limited
- Texaco Trinidad, Inc.
- Texas Petroleum Company
- Texaco Oil Trading and Supply Company
- The Texas Pipe Line Company

5(b) Exxon Corporation has the following affiliates and subsidiaries:

Arabian American Oil Company
 Aramco Services Company
 Trans-Arabian Pipe Line Company (TAPLINE)
 Beb-Gewerkschaften Brigitta Und Elwearth
 Betriebsfuehrungsgesellschaft mb4 Hannover
 Dansk Esso A.S.
 Esso Africa, Incorporated
 Esso A.G.
 Esso Austria A.G.
 Esso Braslleira De Petroleo S.A.
 Esso Eastern, Incorporated
 Esso Europe, Incorporated
 Esso Exploration, Incorporated
 Esso Exploration and Production UK Limited
 Esso Italians S.p.A.
 Esso Nederland, B.V.
 Esso Norge A.S.
 Esso Exploration and Production Norway, Incorporated
 Esso Petroleum Company Limited
 Esso Societe Anonyme Francaise
 Esso Sociedad Anonima Petrolera Argentina
 Esso Standard Oil S.A. Limited
 Esso Standard Oil (Uruguay) S.A.
 Esso Switzerland
 Esso Tankschiff Reederel GmbH
 Esso Transport Company, Inc.
 Esso UK plc
 Exxon Chemical Company
 Exxon Chemicals Americas
 Exxon Coal Resources USA, Incorporated
 Exxon Gas System, Incorporated
 Exxon International Company
 Exxon Pipeline Company
 Exxon Production Research Company
 Exxon Research and Engineering Company
 Exxon Shipping Company
 Friendswood Development Company
 Gilbarco Inc.
 Imperial Oil Limited
 International Petroleum (Colombia) Limited
 Interprovincial Pipe Line Limited
 Iranian Oil Participants Limited
 Lago Oil and Transport Company, Ltd.

Monterey Pipeline Company
Nederlandse Aardolie Maatschappij B.V.
Oy Esso Chemical Ab
Petroleum Casualty Company
Plantation Pipe Line Company
Svenska Esso A.B.
Societe Esso De Recherches Et D'Exploitation
Petrolieries S.A. (ESSO REP)
Esso Middle East
Exxon Minerals Company
Reliance Electric Company
Deutsche Transalpine Oelleitung GmbH
Esso Espanola, S.A.
Esso Italiana S.p.A.
Esso Nederland B.V.
Esso Petroleum Company, Limited
Esso Portuguesa, S.a.r.l.
Esso Standard Libya Inc.
Gewerkschaft Brigitta
Iranian Oil Participants Limited
Iraq Petroleum Company, Limited
N.V. Nederlandse Gasunie
Societe du Pipeline-Sud-European

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IN THE

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ARDEN A. ANDERSON, *et al.*,

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vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,

Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS OF ALABAMA**

The petitioners pray that a writ of certiorari issue to review the decision of the Court of Civil Appeals of Alabama entered on January 14, 1987.

OPINION BELOW

The opinion of the Court of Civil Appeals of Alabama is reported as *State Oil and Gas Board of Alabama v. Anderson*, 510 So.2d 250 (Ala. Civ. App. 1987), and is reproduced in Appendix A.

The decision and order of the Circuit Court of Mobile County, Alabama, and of the State Oil and Gas Board of Alabama, were not officially reported, and are reproduced in Appendices B and C.

The opinion of the Court of Civil Appeals of Alabama on petition for rehearing comprised minor corrections and is officially reported with the initial opinion. It is reproduced in Appendix D.

The Order of the Supreme Court of Alabama, denying writ of certiorari, styled *Ex Parte: Arden A. Anderson re: State Oil and Gas Board of Alabama v. Arden A. Anderson, et al.*, ____ So.2d ____ (Ala. 1987) is not yet reported, and is reproduced in Appendix E.

JURISDICTIONAL GROUNDS

The judgment of the Court of Civil Appeals of Alabama was entered on January 14, 1987. A timely petition for rehearing was denied and opinion corrected on February 18, 1987. A timely petition to the Supreme Court of Alabama for Writ of Certiorari was filed, and denied on July 17, 1987. No petition for rehearing to the Supreme Court of Alabama is allowed. This petition for certiorari was filed within 90 days of July 17, 1987. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The federal constitutional provision interpreted by the Court of Civil Appeals of Alabama is Amendment XIV of the Constitution of the United States, Section 1, which reads in pertinent part

“No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

Hatter's Pond Field was established by the State Oil and Gas Board of Alabama (the Board), and by 1984 there were thirteen gas condensate wells in the field, each producing from a tract comprising a full governmental section. Getty Oil Company (Getty) operated twelve of the thirteen tracts. Petitioners Arden A. Anderson, et al.⁶ (Anderson) owned working interest in the only tract (Section 28) not operated by Getty. Subject to the State conservation statutes⁷, each tract under primary recovery operated competitively with all other tracts.

On February 10, 1984, Getty petitioned the Board requesting that the thirteen tracts be unitized for the purpose of conducting secondary recovery by artificially maintaining pressure in the producing Smackover and Norphlet formations. Getty estimated that four billion dollars of oil and gas could be recovered under unitization. Because secondary recovery methods purposely disturb the flow and place of production of oil and gas, the Rule of Capture⁸ does not justly account to the mineral owners the proceeds of production. Inequitable allocation in unitization amounts to a taking without just compensation.

Under Alabama law, an owner of a unitized interest no longer gets its share of production of the well on its tract, but gets

... an allocation ... based on the relative contribution which each such tract ... is expected to make ... to the total production of oil or gas ...⁹

⁶ One of the petitioners had a small interest in one of the Getty operated tracts.

⁷ Ala. Code § 9-17-1 et seq. (1975)

⁸ Williams and Meyers, *Oil and Gas Law* § 204.4 Vol. I p. 55 (1986)

⁹ Ala. Code § 9-17-83(3) (1975)

The allocation formula is the most difficult problem in unitization¹⁰ because it requires a substantive due process factual determination that, under the formula, an owner in the unit will receive a percentage of the unit proceeds equal to the percentage that his minerals contribute to the total production. This factual determination is typically unique to each field and is made from an analysis of the specific characteristics of the pool or reservoir to be unitized.

Anderson opposed the allocation formula in the Getty petition on the basis that the proposed unitized formation comprised several *separate* reservoirs and that the proposed formula would be technically inapplicable and practically inequitable in a unit where parts of the formation were not in pressure communication with the other parts.¹¹ Anderson's experts estimated that Section 28 would receive \$270,000,000 less than it was due under the proposed formula.

Anderson on March 20, 1984 requested the Board by separate petition to require that certain tests be made in the field before considering unitization. On March 21, 1984, Anderson requested the Board to order production of certain records of Getty; and on March 27 requested that Getty be required to submit its representatives for deposition for the purpose of identifying relevant evidence.

In its first day of hearings on Getty's petition, the Board denied all of the relief requested by Anderson, without a hearing. On petition for a Writ of Mandamus to the Board, the Cir-

¹⁰ Myers, *The Law of Pooling and Unitization*, § 4.02, p. 109 (1967)

¹¹ Anderson alleged that separate tracts, not in pressure communication with the main reservoir, would be given credit in the future for gas already produced or for gas which could not be produced.

cuit Court of Tuscaloosa County ordered the Board to hear Anderson's petition.

The Board consolidated Anderson's petition with Getty's and on June 29 and 30, 1984 heard Anderson's evidence supporting a request for tests and for discovery. After hearing the request for discovery of evidence necessary and relevant to the hearings, the Board proceeded with the hearings and refused to rule on the request until after all of the hearings were over.

On July 3, 1984, Anderson requested that the Board order Getty to supply some specific documents prepared by and wholly controlled by Getty. While Anderson had not seen the documents, it knew of their existence and had compelling reasons to believe that these documents would prove that *Getty's own experts* believed there were separate reservoirs in the Hatter's Pond Field. Because of Getty's control over twelve of the thirteen drilling tracts, Anderson had no practical way of obtaining this same information. If the documents in fact contained the information believed to be in them, it would not just shift the relative weights of the conflicting evidence; it would destroy the technical basis for the allocation formula in the Getty Petition.

The Board had specific power to subpoena the documents¹², but refused to do so. The Secretary to the Board, on request of Anderson, admitted that he knew of no instance in the Board's entire history¹³ where the Board had exercised its power to subpoena documents.

After ten days of hearings and argument, spanning June, July and August 1984, the Board granted the petition of Getty and denied all relief sought by Anderson.

¹² Ala. Code § 9-17-18 (1975)

¹³ The Board was created in 1945. Ala. Code § 9-17-1 et seq. (1975)

Anderson appealed to the Circuit Court of Mobile County, and on May 5, 1986, the Circuit Court invalidated the Board's order, and remanded the cause with instructions, among other things, to provide all participants procedural due process as pertains to discovery.

The Board, Getty, and others appealed the Circuit Court's order to the Court of Civil Appeals of Alabama, which Court reversed the Circuit Court and reinstated the order of the Board.

Anderson sought and was denied rehearing in the Court of Civil Appeals of Alabama; and sought and was denied certiorari by the Alabama Supreme Court.

MANNER OF RAISING CONSTITUTIONAL QUESTION

In its request for discovery dated March 27, 1984 (BR100928 et seq.)¹⁴ Anderson petitioned the Board in part as follows:

I

Petitioner's own exhibits show that the hydrocarbons to be allocated by the Board are worth in excess of Four Billion Dollars. That the enormity of the amount at issue requires that all facts be made available to the Board; that interested parties should have an opportunity to develop facts even at the expense of reasonable delay; that the petitioners Getty Oil Company have proposed an allocation without fully divulging facts known to itself; that the primary operators in the unit owe a duty of good faith to those interest owners who are disproportionately disadvantaged because they do not have tract-wide interests.

¹⁴ BR represents the record of the administrative hearing.

II

That discovery requested by your petitioner, and tests requested by your petitioner are reasonable requests; the information cannot otherwise be ascertained; and that failure to provide the discovery and tests deprives your petitioners of due process. The right to examination and cross-examination at hearing will be relatively meaningless if the petitioner for unitization can control what is submitted in to evidence while withholding evidence material to the issues. The Board itself will be deprived of substantial and jurisdictional evidence without the relief requested.

III

That "opportunity" afforded by section 41-22-12(d) of the *Code of Alabama*, 1975, will be denied if the hearing on this matter is not continued. The "rules" set out in the Supervisor's letter of February 17, 1984, require all exhibits to be submitted concurrently, without opportunity to examine their preparers except at the hearing itself.

Even in the most simple action at law, involving \$5,000.00; our law affords ample opportunity for discovery in order to prevent "ambush" at trial, and allow each party an *adequate* opportunity for cross-examination.

In such a matter as this, discovery and a reasonable time in which to perform it, should be inherent rights.

On June 14, 1984, Anderson filed a "response" in the nature on an answer to Getty's position stating (p. 2)

These petitioners are entitled to full discovery in these proceedings as guaranteed under the United States Constitution and the Constitution of the State of Alabama, to be implemented by the Board or any member thereof pursuant to Section 9-17-8(18), Code of Alabama.

and (p. 15)

Unitization of Hatters Pond Field on any basis must be attended by discovery practices which meet the requisites of due process under both the United States Constitution and the Alabama Constitution. (BR101027)

After the hearings and prior to the Board's order, Anderson wrote in brief (BR101287):

Getty refuses to run the tests and the State Oil and Gas Board has not yet required them to do so. Getty Oil Company also refuses to furnish the owners in Section 28 with the studies which Getty Oil Company itself has made regarding the fact that its edge wells are in separate pools from the main reservoir in which the Section 28 well is located, and that the edge wells have a limited drainage radius and that they are severely depleted at this time. Although all the evidence presented to this Board confirms those facts, Getty Oil Company continues to deny it while the limited glimpse which we have obtained of their own studies do, in fact, confirm it. Getty Oil Company is attempting to trade the owners in Section 28 a "pig in a poke" and it is the duty of this Board to require Getty Oil Company to open the "poke". Due process entitles the owners in Section 28 to the right to look in the poke, and this Board has a duty to enforce that right.

The Board, in its Order 84-382, held (BR101462)

The information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the Board.

On appeal to the Circuit Court of Mobile County, Alabama, Anderson included in its grounds for appeal, the following:

III

The Order appealed from is due to be reversed and the cause remanded because:

A. The order is unconstitutional in that

1. The conduct of the hearing on which the Order was based denied your Petitioner both Federal and State Constitutional guarantees of due process of law, substantive and procedural.
2. The order confiscated property worth hundreds of millions of dollars and gave Petitioners and others credit or compensation therefor worth less than half of the property taken.
3. The Petitioners were denied a fair hearing in that the Board refused on request, to issue subpoenae for evidence which was identifiable, and critically relevant to the issues before it; and the Board refused other necessary reasonable requests for discovery.

Anderson among other things requested the following relief:

- C. Reverse and remand this cause to the State Oil and Gas Board of Alabama, with instruction to:
1. Afford petitioners due process in the acquisition and presentation of evidence;

The Circuit Court of Mobile County, in its order made the following finding of fact

7. On June 7, 1984, on petition by Anderson, the Circuit Court of Tuscaloosa County, Alabama issued a writ of Mandamus to the Board ordering it to hear Anderson's petitions for pressure tests and discovery. (R101022). The Board did hear Anderson's request for pressure tests and discovery, but refused to rule on that request until all hearings were had (for which the discovery had been

requested), and finally denied the requested discovery and tests on October 9, 1984, when Getty's petition was approved in Order No. 84-382 (R101424). Fraud has been alleged on the part of Getty with regard to discovery, however, the Court finds no evidence to support these allegations.

8. The Court finds that, as to the issues which affected Anderson, Getty generated all records on which the Board made its decision in Order No. 84-382. The Court further finds that after general and specific requests for identifiable, material and relevant discovery by Anderson, the Board denied Anderson the right to compulsory production of documents held by Getty (R204359, et seq., R204763 et seq.). The Court also finds as a fact that the Board has never exercised its statutory authority to issue such subpoena as requested by Petitioners. (R206710, August 10, 1984).

9. The Board denied discovery in part because, it said, that Anderson was dilatory in requesting it. The Court finds that over 90 days elapsed from Anderson's first request for pressures and discovery until the first day of substantive hearings on Getty's petition, and that over 200 days elapsed from request before the Board ruled on the request.

In its instructions on remand the Circuit Court of Mobile County addressed the due process issue first.

5. That this cause is hereby remanded to the State Oil and Gas Board for further proceedings consistent with this Order and the Findings of Fact and Conclusions of Law; and on remand the State Oil and Gas Board shall:

(a) provide all participants in the administrative hearing procedural due process as pertains to discovery;

The issue was raised by Respondents in the appeal to the Court of Civil Appeals of Alabama, and that Court dealt with the issue as follows:

Thus, even accepting as true appellees' argument that the information withheld by Getty would give credence to their position that the field consisted of separate mappable reservoirs, extensive testimony was given and numerous supporting documents were offered into evidence to support the Board's finding of a single reservoir. At most, therefore, the requested information would have been merely cumulative of that evidence supporting appellee's position that separate reservoirs existed in the field. The Board would still have been required to make a decision based on conflicting evidence. In other words, the required production of the information sought by appellees would not necessarily have changed the Board's decision. Consequently, we do not find a due process violation by the Board in this aspect of the case.

On petition to the Supreme Court of Alabama, Anderson listed as a ground for review:

C. The Court of Civil Appeals found that your petitioners were not denied procedural due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and the Sixth and Thirteenth Sections of the Constitution of Alabama under these circumstances:

1. Getty Oil Company owned twelve of the thirteen operating units to be brought into the Hatter's Pond Field, and Getty Oil Company alone had possession of non-public data about these tracts;
2. Getty Oil Company alleged and represented to the Board that Hatter's Pond Field comprised *one* reservoir; an allegation upon which the purported validity of the participation formula rose or fell.

3. Your petitioners, along with others alleged and presented evidence that Hatter's Pond Field comprised multiple, separate reservoirs; a position which if accepted would render the participation formula patently invalid;
4. Your Petitioners own interest in the one tract which Getty Oil Company did not operate, and petitioners had no access to *any* data in the rest of the units except what Getty Oil Company voluntarily disclosed;
5. Your Petitioners found in transmittal letters prepared by Getty Oil Company, references to studies prepared by their own employees, which studies *apparently* adopted as a fact the recognition that there were separate reservoirs in the Hatter's Pond Field; these studies were identified and dated;
6. The State Oil and Gas Board denied your petitioners all requests of any kind for compulsory discovery; and denied a specific request for these studies that were identified by name and date;
7. The discovery requested would not have simply added evidence for petitioners but would have contradicted and destroyed the credibility of the position urged by Getty Oil Company and adopted by the Board.

Petitioners believe that this case presents an opportunity for an initial construction of the procedural due process clause of the state and federal constitution as it relates to the right of a litigant in an administrative proceeding to a minimum right to compulsory discovery.

Thus prior to the hearing before the Board in the first instance, and at every stage of the proceedings thereafter, the issue has been timely and properly raised.

REASONS FOR GRANTING THE WRIT

Unitization of the property of non-consenting owners is fairly analogous to the condemnation of smaller areas of the unit, compensated by the award of a percentage of the whole. Thus, while unitization is generally achieved under conservation statutes by state administrative agencies, the process is a traditional police power action requiring just compensation. However, under the premature development of administrative remedies, federal and state courts have been reluctant to define traditional protection for the administrative litigant.

In the administrative proceeding below Anderson attempted to obtain evidence of the worth of other properties, with which his own would be unitized, in order to litigate for just compensation. The administrative board not only denied Anderson all right to compulsory pre-hearing discovery of relevant and material evidence, but when some such documents were otherwise identified, the Board refused to exercise explicit statutory authority to compel production of those documents.

1. This Case Presents An Opportunity To Define The Due Process Rights Of Administrative Litigants In The Areas Of Pre-Hearing Discovery And The Compulsion Of Production.

This court has approached this question in narrower contexts. In construing the use of the Freedom of Information Act, 5 U.S.C. § 553 (1976 ed.), to obtain statements of potential witnesses to an NLRB proceeding the court commented on discovery practice before that agency, but did not have that practice as an issue before it. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978). Commenting on the Fifth Circuit's expanded view of the availability of pre-hearing discovery, this court intimated "...no views as to the validity..." *Id.* at 237, n.16.

In *Harris v. Nelson*, 394 U.S. 286 (1968), this court held that while Rule 33 of the Federal Rules of Civil Procedure was not

applicable to habeas corpus proceedings, the District Court had “plenary” power to use suitable discovery procedures, including interrogatories, if necessary to help the court dispose of the matter as justice and the law require. *Id.* at 290, 292.

In *Miner v. Atlass*, 363 U.S. 641 (1960) the court considered the use of oral depositions for discovery purposes in admiralty, and held that they were unauthorized by any “inherent power” in the federal trial court.

The Circuits of the Courts of Appeals are split, the Fifth Circuit and the Fourth Circuit stating that

...under some circumstances the Board’s decision not to provide discovery may result in unfairness.

Firestone Synthetic Fibers Co. v. NLRB, 374 F.2d 211, 214 (4th Cir. 1967), quoted in *NLRB v. Rex Disposables, Div. of DHJ Industries, Inc.*, 494 F.2d 588, 592 (5th Cir. 1974).

The Second Circuit held that

It is well settled that parties to judicial or quasi-judicial proceedings are not entitled to pre-trial discovery as a matter of constitutional right.

NLRB v. Interboro Contractors, Inc., 432 F.2d 854, 858 (2d Cir. 1970).

The Seventh Circuit has likewise held that

there is no basic constitutional right to pre-trial discovery in administrative proceedings.

Silverman v. Commodity Futures Trading Com’n, 549 F.2d 28, 33 (7th Cir. 1977).

The Supreme Court of California has held that, even though its administrative procedures act does not allow for depositions for discovery purposes, it is left to the courts

... the question whether modern concepts of adjudication call for common law rules to permit and regulate the use of the agencies' subpoena power to secure pre-hearing discovery.

Shiveley v. Stewart, 55 Cal. Rptr. 217, 421 P.2d 65, 67 (1976). In that case "due process" was invoked to allow what the statute didn't provide.

Because of inapposite factual bases, prior state and federal decisions have not addressed the traditional rights involved when property is force-pooled or condemned for conservation purposes. Prior rulings in tax, criminal, quasi-criminal, labor, contract - administration, immigration, and license cases have not considered the kind of case giving rise to this petition.

Massive economic losses are alleged in this administrative case, yet no compulsory discovery of any kind was allowed.¹⁵ At the same time, an automobile accident victim in Alabama, alleging damages in circuit court of five thousand dollars or more, is entitled to a full panoply of pre-hearing discovery and compulsory process for trial. *Alabama Rule of Civil Procedure*, Rules 26-37.

Administrative litigants typically have no *de novo* appeal, and on review are faced with an overwhelming presumption of correctness in the administrative agency or board. Hearing procedures are purposefully informal, and evidence is reviewed for admissibility by lay triers of fact. Boards dealing with technical matters are given an extra measure of discretion. Faced with the lack of many traditional procedural safeguards, what due process right does the administrative litigant have to at least discover his opposition's evidence? This is a federal question of paramount importance which has not but should be settled by this Court.

¹⁵ The second question deals with the Board's refusal to require production of known, relevant evidence, withheld by Getty.

2. The State Appellate Court's Holding Of Harmless Error Is In Conflict With The Decisions Of This Court.

In *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424 (1914), this Court wrote:

To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.¹⁶

The Eighth Circuit, in *NLRB v. Burns*, 207 F.2d 434 (8th Cir. 1953), considered a defense by the Board, to rejection of admissible evidence, as harmless error. That court said at p. 436, quoting from *Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941)

“That a refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it, amounts to a denial of due process is not open to debate. *** That the Board would or might have reached no different conclusion had the rejected evidence been received, is entirely beside the point. The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered.”

Certiorari to the state appellate court will accomplish more than just the correction of error; it will involve correction of concept. The Court of Civil Appeals reasoned thus: (a) there was evidence of separate reservoirs by Anderson, and evidence of a single reservoir by Getty; (b) since there was a conflict in the

¹⁶ Quoted and approved in *Fuentes v. Shevin*, 407 U.S. 67, 87 (1972)

evidence the Board could rule either way; (c) the denial of more evidence by Anderson (out of Getty's own files) of multiple reservoirs "...would not necessarily have changed the Board's decision."

This reasoning contemplates only a slight shift in the relative weights of the evidence; it ignores the possible impeachment of their own witnesses by prior inconsistent findings from their own files.

Because the Board below did have authority to subpoena the documents requested by Anderson, this issue narrows to the question of whether it had discretion to not subpoena the documents just because their production and admission would not necessarily have changed their decision. This is not an admissibility question; without compelling production and seeing the evidence, how could the Board fairly and impartially decide its impact?

The decision below says that a board may reject competent evidence without seeing it. This concept flies in the face of this Court's view of due process.

CONCLUSION

The due process right to fairly litigate traditional property controversies in the modern administrative proceeding are at stake in this cause. The writ should issue to establish and preserve those same rights taken for granted in formal judicial settings.

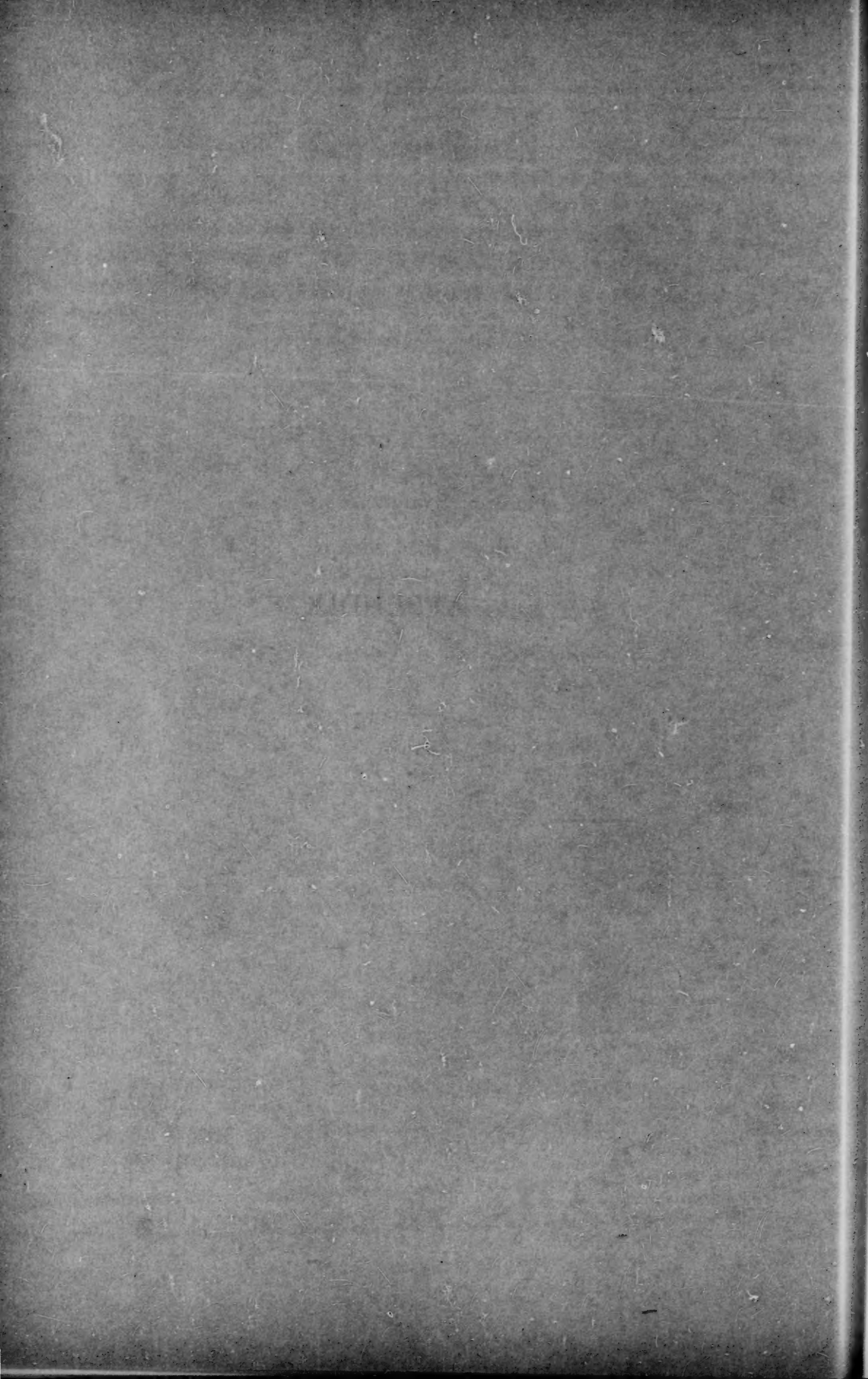
Respectfully submitted,

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APPENDIX



APPENDIX A

STATE OF ALABAMA — JUDICIAL DEPARTMENT THE COURT OF CIVIL APPEALS OCTOBER TERM 1986-87

Civ. 5403-X

**The State Oil and Gas Board of Alabama, Dr. Ralph
Adams, as chairman, etc., et al.**

v.

Arden A. Anderson, et al.

Appeal from Mobile Circuit Court

BRADLEY, Judge

This is a State of Alabama Oil and Gas Board case.

On May 31, 1982 Getty Oil Company (Getty) first petitioned the State of Alabama Oil and Gas Board (the Board) to unitize Hatter's Pond field, a gas condensate reservoir located in Mobile County. Unitization was sought by Getty as unitization is a precondition to the implementation of secondary recovery operations in a field.

Secondary recovery involves the recovery of hydrocarbons by artificially maintaining pressure throughout the reservoir. Secondary recovery, as compared to primary recovery, is desirable because through pressure maintenance more hydrocarbons can be retrieved from the reservoir. Additionally, interest owners like Getty, operating in a unitized field and engaging in secondary recovery, are allocated revenues pursuant to a participation formula rather than according to the amount of hydrocarbons retrieved from their individual well or wells.

Pursuant to section 9-17-83(3), Code 1975, a participation formula adopted in response to a petition for unitization must be:

“An allocation among the separately owned interests derived from or associated with tracts in the unit area of all the oil or gas, or both, produced from the unit pool within the unit area, and not required in the conduct of such operation or unavoidably lost, such allocation to be based on the relative contribution which each such tract or interest is expected to make during the course of such operation, to the total production of oil or gas, or both, so allocated.”

Evidence was presented to the Board in an initial set of hearings by the various interest owners in the field concerning the need for unitization and the appropriate unitization plan. Getty proposed a participation formula for unitization based entirely on pore volume, and the unit area initially proposed by Getty did not include sections 21 and 28, T2S, R1W. The Board issued order No. 83-170, in response to the evidence and unitization petition, on July 29, 1983.

For purposes of appeal, the pertinent findings of the order were, in summary: (1) unitization should be implemented to prevent unnecessary loss of hydrocarbons in the field; (2) the appropriate participation formula for the field should not be based entirely on pore volume, but rather sixty percent on pore volume and forty percent on productivity; (3) the productivity factor of the formula should be defined in terms of a tract's average daily production rate, average daily production being a well's best month of production on the tract; (4) no adjustments to pore volume should be made to reflect pressure-production history, remaining recoverable reserves or present worth of unitized substances; (5) the SE/4 of section 8 and a portion of the NW/4 of section 11, T2S, R1W should be included in the unit area; (6) the SW/4 of section 27 and the S/2 of section 28, T1S, R1W should be included in the unit area; (7) whether any part of sections 28 and 33, T2S, R1W, would be included in the unit area should be determined only after further review by a committee of experts.

Pursuant to these findings the order directed Getty "to immediately prepare a unitization proposal including a Unit Agreement, a Unit Operating Agreement and Special Field Rules." The Board further ordered, inter alia, that: (1) a committee of experts be formed to further map sections 21, 22, and 28; T2S, R1W; (2) Getty should redetermine tract participations in accordance with the 60/40 formula; (3) Getty should promptly submit a new petition for unitization to the Board.

In accordance with the Board's order, an expert committee was formed which met from September 14, 1983 until December 15, 1983. Tract participations were redetermined pursuant to the 60/40 formula, and Getty filed its new unitization petition on February 10, 1984.

Pursuant to the new petition, the Board heard more evidence and reviewed the data prepared by the expert committee. It was also during these proceedings that appellees asked the Board to exercise its subpoena power and require Getty to produce some specified documents.

In response, the Board promulgated order No. 84-382 with the following findings, inter alia: (1) sections 21, 28, and the NW/4 of section 22, T2S, R1W should be included in the unit area; (2) the 60/40 participation formula was supported by substantial evidence; (3) the productivity factor, comprising forty percent of the formula, should be determined from a tract's average daily production rate, average daily production being a well's best month of production on the tract through September 30, 1984, which was the last full month of production before the order's issuance; (4) the appellees' proposed productivity factor, encompassing a shorter time frame than that adopted by the Board, was inappropriate as it failed to consider all the factors necessary in creating a fair productivity factor; (5) earlier findings that adjustments to pore volume not be made should be reaffirmed; (6) no evidence was received which indicated the existence of separate mappable reservoirs in the field; (7) the SE/4

of section 8, T2S, R1W; the NW/4 of section 11, T2S, R1W; a portion of section 22, T2S, R1W; the SW/4 of section 27, T1S, R1W; and the S/2 of section 28, T1S, R1W should be included in the unit area; (8) the discovery requests filed by appellees should be denied.

In accordance with these findings, the Board decreed, *inter alia*, that the 60/40 formula should be adopted with productivity being a tract's average daily production rate, average daily production rate being a well's best month of production through September 30, 1984.

In its third order regarding Hatter's Pond, the Board acknowledged ratification of the unit agreement and unit operating agreement by the statutorily required percentage of interest owners. Consequently, the Board directed that unit operations commence May 1, 1985.

Pursuant to sections 9-17-15 and 41-22-20, Code 1975, three groups of interest owners appealed from the Board's order to the Circuit Court of Mobile County. For purposes of this appeal, the two pertinent groups and their contentions were, in summary: (1) Arden A. Anderson, et al., who represented owners in section 28, T2S, R1W and one owner in section 35, T1S, R1W, maintained that the Board-adopted formula failed to meet the statutory requirements of section 9-17-83(3), Code 1975; and (2) Hatter's Alabama, et al., who owned an interest in section 28, T2S, R1W as well as other sections, also alleged that the Board formula failed to follow the statutory directive in section 9-17-83(3), Code 1975.

We have previously stated that in order to unitize Hatter's Pond field it was necessary for the State Oil and Board to develop a participation formula. Initially, Getty proposed a participation formula based entirely on pore volume. Getty supported the proposal with expert testimony and exhibits. Although experts for most of the other parties agreed that pore volume was a valid indicator of a tract's future production, they

supported the adoption of a participation formula which included other factors in addition to pore volume. These experts maintained that the additional factors would result in a formula more protective of the coequal and correlative rights of the interest owners.

Several alternative formulas were proposed by the parties, including formulas based: (1) 50% on pore volume and 50% on historical average daily production; (2) on at least 50% productive capacity; (3) on past average daily production; (4) 50% on pore volume and 50% on productive acreage; (5) 100% on cumulative production; (6) 50% on pore volume and 50% on well tests; and (7) 50% on "highest tested capacity" and 50% *adjusted* pore volume. The participation formula ultimately adopted by the Board was based on two factors. The first factor, comprising sixty percent of the allocation formula, was based on pore volume. The second factor was based on productivity and accounted for the remaining forty percent of the formula. Further, the Board defined productivity as a tract's average daily production, average daily production being a well's best month of production on the tract.

Although the circuit court upheld the Board's order with regard to the inclusion of a productivity factor, the court found that productivity as defined by the Board was unreasonable and was unsupported by the evidence. Appellants support the productivity factor as defined by the Board and have appealed the circuit court's holding.

We first note the flexibility afforded the State Oil and Gas Board in issuing relief pursuant to a petition for unitization:

"Entry of Rules, Regulations, and Orders. During or after conclusion of any hearing, including continued sessions thereof, the Board shall promptly take such action as it may deem appropriate concerning the subject matter being considered by the Board" (emphasis added)

Rule 400-1-12-.23, State Oil and Gas Board of Alabama Administrative Code.

The rule further provides the Board is not bound to grant the specific relief asked for in a petition but may amend or take “other appropriate action regarding the petition.” Rule 400-1-12-.23, *supra*. Likewise, section 9-17-7(f), Code 1975, gives the Board great flexibility in fashioning relief:

“[T]he Board ... shall take such action with regard to the subject matter thereof as it may deem appropriate. (emphasis added)

Our review of an order issued by the Oil and Gas Board pursuant to these provisions, as was the review by the circuit court of Mobile County, is governed by section 9-17-15, code 1975. Absent any allegation that the Board acted without or in excess of its jurisdiction in issuing the order or that the order issued was unconstitutional or procured by fraud—and there was none,—we are restricted to an examination of whether the order was reasonable and supported by the evidence. § 9-17-15, Code 1975.

In examining the reasonableness of the order, we have previously stated that “[a] determination by an administrative agency is not ... ‘unreasonable’ where there is reasonable justification for its decision.” *Hughes v. Jefferson County Board of Education*, 370 So. 2d 1034 (Ala. Civ. App. 1979). Further, the Board’s orders “are presumed to be prima facie correct” and, if we determine that evidence was offered which supports the order, then we must affirm. *Roberts v. State Oil & Gas Board*, 441 So. 2d 909 (Ala. Civ. App. 1983). The statute does not mandate that there be substantial evidence. *State Oil & Gas Board v. Seaman Paper Co.*, 285 Ala. 725, 235 So. 2d 860 (1970). We simply determine whether the evidence supports the Board’s orders. *Seaman, supra*.

We cannot substitute our judgment, nor could the circuit court, substitute its judgment, for the Board’s with regard to

these findings of fact, and we consequently attach no presumption of correctness to the circuit court's ruling. *Seaman, supra*.

Although expert testimony was presented supporting a participation formula based entirely on pore volume, other experts testified that the heterogeneity of Hatter's Pond made a single factor formula unreliable. As a result, the Board heard evidence supporting the inclusion of a second factor. Alternative two-factor formulas were proposed, including several that added a productivity factor. Several experts testified that the inclusion of such a factor would result in a participation formula more protective of correlative rights. The Board accepted this position and adopted a participation formula which was based in part on productivity.

We note, however, that appellees object not to the addition of a productivity factor, but to the time frame from which the productivity factor was obtained. Appellees' experts espoused a much shorter and more recent time period as being the appropriate yardstick for measuring productivity. However, as expert testimony indicated that to select a shorter time frame would not take into account the varying conditions of the wells in Hatter's Pond, the Board opted for a more expansive time frame.

Evidence suggested that the wells would be at varying stages of physical deterioration within the more recent time frame. However, productivity as defined by the Board takes into account this factor by expanding the time frame from which a well's productive capability is determined. We opine that this decision was reasonable and reflected the Board's desire to eliminate from the formula any possibility of skewed production figures due to the age of a well, the corrosion within it, the salt buildup within it, as well as other time related factors.

The need for an accurate well production factor is obvious. An older well with salt buildup, corrosion, etc., might not produce at full capacity. As a result, it could inaccurately reflect an

underlying tract's ability to produce. An expansive time frame, however, would put all the wells, regardless of age, on equal footing, because each well's best month of production would be used as the critical factor. Such an allocation factor would put each well in its best light and thus would be nondiscriminatory. Therefore, the Board reasonably concluded that a well's best month of production was a better indicator of the underlying tract's ability to produce in the future than was a month within the more limited time frame, making the Board's order concerning this issue not without reasonable justification as required by *Hughes, supra*.

We note that the productivity factor is not designed to reflect what a single *well* will contribute to future production but is to be an indicator of what the *entire tract* will contribute. In light of this fact, the Board was not unreasonable in attributing to each tract the best month in a well's history.

Further, as experts testified that a productivity factor would result in a fairer participation formula, their decision to include such a factor is not unsupported by the evidence. We also note that the Board's alternatives with regard to defining productivity are not limited to those proposed by the participants in the hearings. § 9-17-7(f), Code 1975; *see also*, Rule 400-1-12-.23, *supra*. Consequently, it was within the province of the Board to define productivity in a manner not *specifically* proposed by the hearing participants. So long as the formula was reasonable and supported by the evidence, we may not substitute our judgment for that of the Board. *Seaman, supra*. We find that the formula meets these requirements.

Appellants also asserted as error the circuit court's directive that a revised participation formula be developed and applied retroactively. As we have upheld the Board's original formula, review of this issue is not required.

The Board determined that the SW/4 of Section 27, the S/2 of Section 28, T1S, R1W, and the SE/4 of Section 8, T2S, R1W

should be included in the unit area. However, the circuit court asked the Board to reconsider on remand whether these three tracts should be included in the unit. We find this direction incongruous with the court's finding: "The Court does not find that the inclusion of these tracts in the unit is not supported by the evidence or is not reasonable"

We agree with the circuit court's determination that the Board's inclusion of these tracts is supported by the evidence and is reasonable. First, the record is replete with expert testimony that no portion of Hatter's Pond should be mapped as constituting a separate reservoir. This position was further supported by geological maps introduced at the hearings. The significance of such a determination is that all tracts that are a part of a single reservoir are necessarily in communication with the others. Although contradictory expert testimony suggested that these tracts were not in communication with the Hatter's Pond reservoir (suggesting the existence of separate reservoirs), the Board heard this evidence and resolved the controversy in favor of the experts supporting the single reservoir concept.

In addition, there was expert testimony that these tracts will contribute to unit production. Specifically, O'Dell, an expert for Getty, testified that hydrocarbons are located in Tracts 800, 2700, and 2800, and that these tracts will contribute to unit production. Other engineers supported his position.

As we cannot substitute our judgment for that of the Board's, *Seaman, supra*, and the decision to include the tracts is not unreasonable or unsupported by the evidence, we affirm the Board's inclusion of Tracts 800, 2700, and 2800 within the unit area.

We also note that appellee Anderson maintains that these three tracts, as well as two additional tracts, Section 11, T2S, R1W (Tract 1100) and Section 22, T2S, R1W (Tract 2200), should not be included because they are not developed and at the time of unitization had no producing wells on them. To

support this contention, Anderson relies on section 9-17-12(d), Code 1975. Appellees' reliance on this section is misplaced as this particular Code section deals with allocation during primary production.

On the other hand, allocation during secondary recovery is governed by sections 9-17-80 through -88, Code 1975. This article of the Oil and Gas chapter deals with unit operations as compared to the article cited by appellee Anderson which deals with conservation and regulation of production. Pursuant to section 9-17-82, Code 1975, the Board is authorized to unitize "an entire field ... to prevent waste or to avoid the drilling of unnecessary wells." This section does not limit unitization to those areas of the field that have currently producing wells.

Finally with regard to the inclusion of Tracts 1100 and 2200, experts testified that both tracts were underlain with recoverable hydrocarbons. Simply because these tracts have no producing wells they are not excludable from the unit area. Pursuant to section 9-17-83(3), Code 1975, Tracts 1100 and 2200 must be allocated a portion of the revenues "based on the relative contribution which each such tract or interest is expected to make." The Board has complied with this mandate, and we affirm the tracts' inclusion.

Appellants further assert that the circuit court erred when it directed the Board on remand to afford "procedural due process as pertains to discovery" to the parties involved in the controversy. Appellees have interpreted this statement as reflecting a finding by the circuit court that appellees were indeed denied procedural due process. Appellants argue that this is not the case. They maintain that the court was simply issuing a directive to insure that on remand all parties would be afforded procedural due process with regard to discovery.

Accepting as true appellees' contention that the circuit court found appellees were denied procedural due process in the hearings before the Oil and Gas Board, we first review whether our

Oil and Gas statutes afford participants a constitutional right to pretrial discovery in proceedings before an administrative agency.

We note that in the case of *Dawson v. Cole*, 485 So. 2d 1164 (Ala. Civ. App. 1986), we stated: "It has been generally recognized that there is no basic constitutional right to prehearing discovery in administrative proceedings." Appellants assert that this statement forecloses any further inquiry into this issue. We disagree.

A closer reading of our opinion in *Dawson, supra*, discloses our acknowledgement that "the denial of prehearing discovery *as applied* in a particular case" could result in a due process violation. Thus, we must examine whether the Board's denial of appellees' discovery request did in fact result in a denial of procedural due process.

We have examined the record and are satisfied that it did not. Throughout these proceedings, appellees have maintained that separate reservoirs exist in Hatter's Pond field. Appellees maintain that the information they requested but to which they were denied access would support their contention. However, numerous experts testified and maps were presented refuting this position.

Thus, even accepting as true appellees' argument that the information withheld by Getty would give credence to their position that the field consisted of separate mappable reservoirs, extensive testimony was given and numerous supporting documents were offered into evidence to support the Board's finding of a single reservoir. At most, therefore, the requested information would have been merely cumulative of that evidence supporting appellee's position that separate reservoirs existed in the field. The Board would still have been required to make a decision based on conflicting evidence. In other words, the required production of the information sought by appellees would not necessarily have changed the Board's decision. Con-

sequently, we do not find a due process violation by the Board in this aspect of the case.

In its cross appeal Hatter's Alabama contends that because the value of full well stream gas in Section 17 is lower than the value of the gas produced by the other sections, the circuit court erred by not directing the Board to adjust its formula to reflect this difference. We have examined the record and find that the Board's original decision not to adjust the pore volume factor allocated to Section 17 is supported by the evidence.

Recognizing once again that the Board's orders are presumed valid, *Roberts, supra*, and that we cannot substitute our judgment for the Board's, *Roberts, supra*, we cannot say that the decision not to make an adjustment is either unsupported by the evidence or unreasonable. Thus, we affirm its decision not to make an adjustment.

Expert testimony was presented that indicated that a well's liquid yield was not a good determinant of the underlying tract's contribution. For example, an expert for Getty testified that two wells had been drilled on one particular tract— only one hundred and ninety feet apart, and a sixteen percent difference in the condensate yield from the wells resulted.

Additional expert testimony showed that liquid yield was not a good indicator of contribution as condensate yield could be affected simply by the location of the well perforation. We hold this is sufficient evidence from which the Board could reasonably conclude that an adjustment to pore volume based on liquid yield would not result in a more accurate participation formula.

Finally, Anderson asserts in its cross appeal that the Board should be directed to make adjustments to the pore volume factor that comprises sixty percent of the formula. Anderson maintains that without an adjustment to pore volume based on the remaining recoverable reserves left in a tract, the participa-

tion formula will have no reasonable relation to each tract's expected contribution to future unitization. Anderson then advocates conducting bottom hole pressure tests for determining these remaining recoverable reserves. They contend that it is "elementary" that the amount of pressure in a container is indicative of the amount of gas in it.

The Board, however, rejected this argument and found that conducting bottom hole pressure tests were both unnecessary and unwarranted. O'Dell, a Getty expert, testified that seven years of production and pressure in Hatter's Pond made additional bottom hole pressure tests useless. Exxon also testified that too much pressure variation existed for the tests to be reliable, and they would not prove the existence of separate reservoirs within the field. More importantly, they testified this type of testing was of value only if Hatter's Pond consisted of more than one reservoir.

We have already pointed out that the Board determined Hatter's consisted of one reservoir and that such a determination was reasonable. An expert for appellees testified that the Board formula was appropriate if Hatters' were one reservoir. Thus, appellees' own expert supports the Board's refusal to make any adjustment to pore volume based on remaining recoverable reserves.

Based on the evidence and the guiding standard of review, we reverse the order of the circuit court and remand it for the entry of an order affirming the orders of the Oil and Gas Board.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Wright, P.J., and Holmes, J., concur.

APPENDIX B

**IN THE CIRCUIT COURT OF MOBILE COUNTY,
ALABAMA**

Civil Action No. CV-84-003048

Arden A. Anderson, *et al.*,
Petitioners,

v.

Ralph Adams, *et al.*,
Respondents.

Civil Action Nos. CV-84-003104 and CV-85-000527

In the Matter of the Petition
of Dr. Gerald Wallace,
Appellant,

v.

The State Oil and Gas Board
of Alabama, a State Agency, and
Getty Oil Company, Inc.
Respondents.

Civil Action No. CV-84-003106 and CV-85-001281

Hatters Alabama Company and
LeBoc Mobile Company,
Plaintiffs,

v.

State Oil and Gas Board
of Alabama, *et al.*,
Defendants.

ORDER

Arden A. Anderson, et al. (Anderson), Petitioners in CV-84-003048, appealed to this Court under Sections 9-17-15 and 41-22-20, *Code of Alabama* (1975) from Orders of the State Oil and Gas Board of Alabama, (the Board) Order No. 84-382 rendered October 9, 1984, and Order No. 85-63, rendered April 9, 1985.

This statutory appeal was consolidated with appeals by Dr. Gerald Wallace (Wallace) Civil Action Nos. CV-84-003104 and CV-85-000527, and by Hatters Alabama Company, et al., (Hatters) CV-84-003106 and CV-85-001281. Getty Oil Company (Getty) was permitted to intervene on behalf of the Respondent State Oil and Gas Board of Alabama.

These appeals arise out of administrative orders by the Board, unitizing and commingling production in the Hatters Pond Field in Mobile County, Alabama, appointing Getty as operator of the unitized field, and setting an allocation formula by which those who had separate interests in the former individual production units would be paid out of the now combined production of all wells.

The appeals of Anderson and Hatters allege multiple errors by the Board in the conduct of the hearings leading to the Orders, and in the actual Orders themselves. While their interests in the field, and in the litigation, are not identical, their bases for appeal are substantially similar.

Wallace appeals on the basis that his land should have been, but was not, included in the unit.

Anderson appealed based on the statutory provisions found in the enabling act for the Board, and based upon the provisions of the Administrative Procedures Act.

The Court finds that the Administrative Procedures Act, Section 41-22-1, et seq., *Code of Alabama* (1975), governs these

proceedings procedurally since the filing date of the petition (Docket No. 4-11-841) by Getty is February 10, 1984. However, the scope of review is contained in Section 9-17-15, *Code of Alabama* (1975) where the appeal or review statutes set forth the standards applicable to that agency.

As pertinent to this decision, Section 9-17-15 states:

“The reviewing court shall limit its consideration to the following:

. . .

- (4) Whether the rule, regulation or order is reasonable; and
- (5) Whether the rule, regulation or order is unsupported by the evidence.”

This case was briefed and heard without additional evidence, as required by the statute. Therefore, the court's Findings of Fact are from the record. Because the record in this case consists of several thousand pages of transcript, and hundreds of exhibits (comprising thousands of pages), the court has depended in large degree upon the diligence of the parties in bringing forward the contentions and the specific parts of the record which support those contentions. Where the Appellants have alleged that there was no evidentiary basis to support some finding or order of the Board, ample opportunity has been afforded to Respondents to bring to the attention of the Court that part of the record meeting that allegation.

Having received thorough briefs and proposed orders by all parties, and having, on October 11, 1985, heard arguments of counsel for all parties, the Court makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACTS

1. The Hatters Pond Field is located in Mobile County, Alabama, approximately 20 miles north of the City of Mobile.

Production is derived from one or more gas condensate reservoirs in the Smackover and Norphlet formations at a depth of about 18,000 feet. The field was discovered in December, 1974, with the completion of the Peter Klein 3-14 No. 1 well. When Getty filed with the Board its Petition No. 4-11-481 (which resulted in Order No. 84-382) there were a total of 12 wells inside the proposed unit producing gas to the gas processing plant, and one well drilling within the proposed unit, the S. M. Adams 9-16 No. 1 well, which was later completed as a producing well. All such wells were drilled on a drilling and/or production unit consisting of a section of land, containing 640 acres more or less. Getty operated all wells within the proposed unit, with the exception of the Wilkie 28-1 Well, which was operated by Exxon Company, U.S.A. ("Exxon"). There are portions of five sections, all without producing wells, which are included within the unit. They are S/2 of Section 28 and SW/4 of Section 27, T1S, R1W, on which dry holes have been drilled; SE/4 of Section 8, T2S, R1W, and portions of Sections 11 and 22, T2S, R1W, which are described by metes and bounds, on the latter of which a dry hole had been drilled.

2. The Hatters Pond Field is a complicated, complex field. The Board itself described the field as unique in the terms of structural and stratigraphic complexities that include faults, salt intrusions, lithological changes, and large variations in porosities, permeabilities and hydrocarbon pay thicknesses and distributions. These factors greatly influence the amount of hydrocarbons beneath each tract and the ability of the wells to produce these hydrocarbons. The Hatters Pond Field produces hydrocarbons from two different formations or rock units, the Smackover Formation, which is primarily a carbonate, and the Norphlet, which is primarily a sandstone. Both formations have distinct and often highly variable characteristics that result from their depositional and diagenetic histories, which characteristics include chemical compositions and variations in porosities, permeabilities and water saturation, all of which affect the distribution of hydrocarbons within the reservoir or

reservoirs. There are also extreme variations in hydrocarbon pay thicknesses within the field, and these are related to the amount of structural deformation as well as to the porosity and permeability changes. As stated, the field had been developed on a 640 acre spacing pattern, resulting in large distances between wells.

3. One characteristic of the field, and one of the differences between tracts in the main part or the east side of the field, and the edge tracts, (located to the west) is that the greatest hydrocarbon pay thicknesses are concentrated on the east side of the field, and extend from Section 35, T1S, R1W, in the north to Section 28, T2S, R1W in the south. The combined Smackover and Norphlet net pay thicknesses range from 369 feet in the 2-6 Well down to 31 feet in the 17-10 well and 7 feet in the 28-10 well (a dry hole located in Section 28, T1S, R1W). The wells on two of the edge tracts, Section 17, T2S, R1W and Section 33, T1S, R1W, have no productive Norphlet Formation and the same is true for the 9-6 and the 28-10 wells, both dry holes located respectively on Section 9, T2S, R1W, and Section 28, T1S, R1W. These wells had respectively 19 and 17 feet of net pay in the Smackover.

4. The participation formula approved by the Board consists of a 60% pore volume factor and a 40% productivity factor, with the productivity factor defined as the average daily production on a tract determined from a well's best month's production on that tract from date of first production through September 30, 1984. Since the pore volume of the unit area and of each tract was determined from the mapping of the field, and the production records showed the production from each well on a monthly basis, it required only mathematical calculations to determine the participation factor of each tract. Hatters and Anderson contend that the productivity factor, as defined by the Board, does not meet the requirements of expected relative contribution, as required by Section 9-17-83(3), *Code of Alabama*, (1975), whether or not such productivity factor is us-

ed in combination with the 60% pore volume factor. The Court agrees. The Court has reviewed carefully the results of the application of the Board's productivity factor to the various tracts in the Unit, and is satisfied that the productivity factor allocated to tracts such as Section 33, T1S, R1W and Sections 4 and 17, T2S, R1W, in no way constitute a measure of the expected relative contribution of these tracts to the future unit production. The Court finds no evidence in the record supporting the Board's participation formula as meeting the statutory requirements of section 9-17-83(3) *Code of Alabama* (1975). Further, it is unreasonable to say that what the 4-10 No. 1 well produced during May, 1976 is a measure of what Section 4 can be expected to produce in the future. The same can be said of the September, 1978 production from the 33-10 No. 1 well on Section 33; and the August, 1978 production from the 17-10 No. 1 well on Section 17. In 1979 and 1980, the extrapolated bottom hole pressures from wells on these tracts were substantially lower than the pressures in the main part of the field. The wells on these tracts now produce only with the aid of compressors; and the communication between the wells on these sections with the main part of the field is at best very poor.

5. If the participation factor allocated Section 33, T1S, R1W and Sections 4 and 17, T2S, R1W under the Board formula, is greater than the expected relative contribution of those tracts to the future Unit production, it has the effect of reducing the participation factors for the other tracts in the Unit. The mineral owners in Sections 33, 4 and 17 are unjustly enriched at the expense of the mineral owners in the other Unit tracts. Substantial sums are involved, as one Getty Exhibit shows the estimated recovery with unitization to be almost \$3.2 billion. This same Exhibit shows that the mineral owners in Section 28, T2S, R1W, (the Wilkie 28-1 Well) will recover \$70,000,000 less under the Board-ordered unitization than they would have without unitization. It greatly concerns the Court that these mineral owners suffer such a substantial loss by virtue of unitization,

while the mineral owners in all other tracts substantially benefit from unitization, except for one tract, which suffers only a small loss.

6. Hatters and Anderson contend that the SW/4 of Section 27 and S/2 of Section 28, T1S, R1W and the SE/4 of Section 8, T2S, R1W, should not be included within the unit. These tracts are underlain by the Smackover formation (and not the Norphlet) which has been mapped as productive, but there is evidence that there is no communication between these tracts and any producing well. Dry holes have been drilled on two of the tracts, Sections 27 and 28, T1S, R1W. As noted above, to the west, towards the edge of the field, there is a high percentage of nonpay in the Smackover; and there are stringers of tight zones separating porous and permeable zones, which means that the communication to the west is not as good as it is elsewhere; and the connate water saturation is a little higher to the west. The only evidence that these tracts will contribute to the unit production is the opinion testimony of Getty's Harold O'Dell, who testified that since the mapping of these areas showed that they were in communication with the rest of the field, one must therefore assume there was communication until such time as there was proof to the contrary. The Court does not find that the inclusion of these tracts in the Unit is not supported by the evidence or is not reasonable, but since the Court has already determined that the Board's participation formula does not meet the statutory requirements of Section 9-17-83(3), *Code of Alabama* (1975), the Court requests the Board to address this question again.

7. On June 7, 1984, on petition by Anderson, the Circuit Court of Tuscaloosa County, Alabama issued a writ of Mandamus to the Board ordering it to hear Anderson's petitions for pressure tests and discovery. (R101022). The Board did hear Anderson's request for pressure tests and discovery, but refused to rule on that request until all hearings were had (for which the discovery had been requested), and finally denied the requested

discovery and tests on October 9, 1984, when Getty's petition was approved in Order No. 84-382 (R101424). Fraud has been alleged on the part of Getty with regard to discovery, however, the Court finds no evidence to support these allegations.

8. The Court finds that, as to the issues which affected Anderson, Getty generated all records on which the Board made its decision in Order No. 84-382. The Court further finds that after general and specific requests for identifiable, material and relevant discovery by Anderson, the Board denied Anderson the right to compulsory production of documents held by Getty (R204359, et seq., R204763 et seq.). The Court also finds as a fact that the Board has never exercised its statutory authority to issue such subpoena as requested by Petitioners. (R206710, August 10, 1984).

9. The Board denied discovery in part because, it said, that Anderson was dilatory in requesting it. The Court finds that over 90 days elapsed from Anderson's first request for pressures and discovery until the first day of substantive hearings on Getty's petition, and that over 200 days elapsed from request before the Board ruled on the request.

10. The issue raised by Wallace regarding the Wallace acreage is the factual issue of whether that property is underlain by hydrocarbons that will contribute to production in the Hatters Pond Unit. Maps and documentary evidence were admitted into the record which showed no hydrocarbons in the Smackover-Norphlet Gas Pool of the Hatters Pond Field underlay the Wallace acreage (R300107-120, 302284-346). Wallace put forth evidence that would suggest that productive portions of the Smackover-Norphlet Gas Pool extend underneath the Wallace acreage. After considering the conflicting evidence on this issue, the Board found, in Order No. 83-170, that the Wallace acreage was not underlain by hydrocarbons in the Smackover-Norphlet Gas Pool and should not be included in the Unit.

11. During the hearings after the issuance of Order No. 83-173 and prior to the issuance of Order No. 84-382, Wallace was allowed to submit additional evidence. This evidence was in the form of new seismic line test data. (R302196). Expert witnesses for Wallace testified that, although the seismic line test data appeared to indicate that the Smackover-Norphlet Gas Pool did not extend under the Wallace acreage, this data had to be adjusted to account for various geological problems and that, when adjusted, the data showed that said pool did extend under the Wallace acreage. (R204947-995). Expert witnesses for Getty testified that the data demonstrated without the adjustment, the true state of geology underneath the Wallace acreage and that the Smackover-Norphlet Gas Pool did not extend beneath the Wallace acreage. (R205329-331, 205340). After considering the conflicting evidence, the Board again found that the Wallace acreage was not underlain by recoverable hydrocarbons that would contribute to Unit production.

12. Findings 26 through 35 in Order No. 83-170 and findings 39 through 45 in Order No. 84-382 set forth clearly and in detail why the Board concluded that there were no recoverable hydrocarbons under the Wallace acreage that would contribute to Unit production.

13. There is substantial evidence in the record to support the Board's findings and rulings with respect to the Wallace acreage and the Court finds that the Board's findings and rulings in this regard are reasonable.

CONCLUSIONS OF LAW

1. As noted above, this Court's consideration of Order Nos. 85-63 and 84-382 is governed by Section 9-17-15, *Code of Alabama* (1975), which sets forth the standards of review by which a reviewing court must judge the validity of an Order issued by the State Oil and Gas Board. As pertinent to this decision, Section 9-17-15 states as follows:

The reviewing court shall limit its consideration to the following:

. . .

(4) Whether the rule, regulation or order is reasonable; and

(5) Whether the rule, regulation or order is unsupported by the evidence.

2. The two standards of review quoted above are separate and distinct points of review; in other words, a finding by this Court that the Board Orders under review, or any particular aspects thereof, are supported by some evidence in the record does not necessarily compel a conclusion that such an order (or part thereof) is reasonable. The plain language of Section 9-17-15 indicates as much; in the absence of any expressed intent to the contrary, it must be presumed that the legislature would not have enacted two standards of review if it had intended that these standards be treated as one. Further support for this conclusion may be found in numerous cases decided under the Federal Administrative Procedure Act, 5 U.S.C. Section 706(2), which provides in pertinent part that an administrative agency's action may be set aside if it is (a) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or (b) "unsupported by substantial evidence." These standards of review are analogous to those found in Section 9-17-15 and quoted above. In *Bowman Transportation, Inc. v. Arkansas-Best Freight System*, 419 U.S. 281, 95 S. Ct. 438, 42 L.Ed.2d 447 (1974), the United States Supreme Court held that an administrative agency's action may be deemed "arbitrary or capricious" (i.e., "unreasonable") even though it is supported by "substantial evidence." See also *Midwest Coast Transport, Inc. v. United States*, 391 F. Supp. 1209 (D.S.D. 1975); *Scanland v. U. S. Army Test and Evaluation Command*, 389 F. Supp. 65 (D. Md. 1975). Therefore, even if this Court should find that Order Nos. 85-63 and 84-382, or any particular por-

tions thereof, are supported by the evidence, its inquiry may go further in order to determine the reasonableness of those orders.

3. With regard to determining the validity of the 60% pore volume/40% productivity formula selected by the Board as the basis for allocating Unit production among the various tracts in the Hatters Pond Field Unit, this Court must apply the standards of review found in Section 9-17-15 in light of an additional statutory requirement that is specifically directed at the manner in which Unit production must be allocated. Section 9-17-83(3), *Code of Alabama* (1975) requires that Unit production be allocated among the individual tracts within the Unit according to "the relative contribution which each such tract or interest is expected to make" during the course of the Unit operations. Order No. 84-382, as implemented by Order No. 85-63, calculates the 40% productivity factor according to the highest average daily production rate as determined from a well's best month of production on a tract, from the date of first production (as early as 1975) through September, 1984. The Plaintiffs have attacked this method of calculating the 40% productivity factor as violative of Section 9-17-83(3). Applying Section 9-17-83(3) in conjunction with the pertinent standards of review set forth in Section 9-17-15, this Court views the issues with respect to the validity of the method used to calculate the 40% productivity factor as follows:

(a) Is the method of determining the 40% productivity factor "supported by the evidence?" In other words do the "tendencies of the evidence" and the "reasonable inferences to be drawn therefrom," (*State Oil and Gas Board of Alabama v. Seaman Paper Company*, 285 Ala. 725, 231 so.2d 860 (1970)) support the Board's finding that a particular tract's highest daily average during its best month of production is an acceptable reflection of what that tract may be expected to produce in the future as a part of the Hatters Pond Field Unit?

(b) Is the method of determining the 40% productivity factor “reasonable?” In other words, is there a “rational connection” (*Bowman Transportation, supra*) between a tract’s highest daily average during its best month of production and the amount which that tract may be expected to produce in the future as a part of the Hatters Pond Field Unit?

4. In attempting to defend the 60% pore volume/40% productivity allocation formula and the Board’s chosen method of calculating the 40% productivity factor, Getty argues that the State Oil and Gas Board heard arguments on a wide range of possible allocation formulas and methods of calculation, none of which were completely satisfactory, and arrived at the formula and method of calculation embodied in Order No. 84-382 as a reasonable compromise or middle ground. This argument might be persuasive if the validity of Order Nos. 84-382 and 85-63 were to be determined in the abstract. However, this Court finds that the validity of these Board Orders can be judged properly only by examining the results that are obtained when the 60% pore volume/40% productivity factor is actually put into operation and applied to the Hatters Pond Field. The cases of *Halbouty v. Railroad Commission*, 163 Tex. 417, 357 S.W.2d 364 (1962), *cert. denied*, 371 U.S. 888 (1962), *Atlantic Refining Company v. Railroad Commission*, 346 S.W.2d 801 (Tex. 1961), and *Marrs v. Railroad Commission*, 177 S.W.2d 941 (Tex. 1944), are particularly applicable in this regard. In each of these cases, the court struck down a proration formula because it found that when that formula was put into effect, it produced unreasonable results by allowing certain tracts to receive credit for production that was far in excess of their actual productive capability, at the expense of other, more productive tracts. This Court believes that it should examine the orders at issue in this case in the same manner.

5. For the reasons set forth in the Findings of Fact, the Court finds that it is simply unreasonable to calculate the 40% productivity factor according to a particular tract’s highest daily

average during its best month of production, no matter how long ago that peak production occurred and regardless of whether the well on that tract still produces. It only requires a simple exercise of common sense to see that what a well produced during one month, in, for example, 1976 (as in the case of the 4-10 No. 1 Well) has no rational connection to what that tract can be expected to contribute to Unit operations in the future, given the subsequent production history of that tract. Indeed, Getty's own Exhibits show that the application of this productivity factor to the Hatters Pond Field results in certain tracts being credited with far more production than what their current production history shows them to be capable of producing. Nor does this Court find any evidence in the record that would support a finding that the productivity factor as defined by the Board is any measure of a tract's expected relative contribution to the Unit production. Order No. 84-382, as implemented by Order No. 85-63, therefore fails to meet the statutory requirement of Section 9-17-83(3) and is due to be invalidated under Sections 9-17-15(4) and 9-17-15(5).

6. The Court finds, as a matter of law, that the due process clauses of the State and Federal Constitutions provide all litigants (including those in administrative procedures) with such reasonable compulsory discovery as will afford each litigant the right to find and submit all the data affecting all of the issues before the tribunal. *Ex Parte Dorsey Trailers, Inc.* 397 So.2d 98 (Ala. 1981).

The Supreme Court of Alabama in *Medical Services Administration v. Duke*, 378 So.2d 685, 686 (Ala. 1979) said:

"It is, of course, well-settled law in this jurisdiction that due process must be observed by all boards, as well as by all courts. *State Tenure Commission v. Madison County Board of Education*, 282 Ala. 658, 213 So. 2d 823 (1968); *Katz v. Alabama State Board of Medical Examiners*, 351 So.2d 890 (Ala. 1977) Procedural due process in this

respect requires at a minimum an orderly proceeding appropriate to the case or adapted to its nature, just to the parties affected, and adapted to the ends to be attained; one in which a person has an opportunity to be heard, and to defend, enforce, and protect his rights before a competent and impartial tribunal legally constituted to determine the right involved; representation by counsel; procedure at the hearing consistent with the essentials of a fair trial according to established rules which do not violate fundamental rights, and in conformity to statutes and rules, conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed; revelation of the evidence on which a disputed order is based and opportunity to explore that evidence, and a conclusion based on the evidence and reason.”

Section 41-22-12(d), *Code of Alabama* (1975) provides:

“Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved. . .”

Section 41-22-13(c), *Code of Alabama* (1975) provides:

“A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.”

7. The Court finds, as a matter of law, that because the discovery sought is labelled “proprietary”, is not sufficient reason to prevent its disclosure. As a matter of law, Getty cannot at the same time attempt to force a party into unitization, trading specific property for a percentage of a larger property, without allowing the forced parties to discover, evaluate and litigate the respective values of the trade before the Board. *Texas Oil and Gas Corporation v. Hawkins Oil and Gas, Inc.*, 668 S.W.2d 16 (Ark. 1984). Fairness and justice dictate that

Getty, because of its filing the petition for unitization and because of the unique position it occupies in the field, must submit to discovery all evidence reasonably relevant to the issues contained in the petition.

8. Order Nos. 83-170 and 84-382 set forth in detail the reasons why the Board decided that the Wallace acreage should not be included in the Unit. The findings and conclusions in those orders address all points that were materially at issue with respect to the Wallace acreage during the hearings before the Board. These orders meet whatever requirement of law may be applicable that such orders contain specific findings of facts and conclusions of law. Furthermore, substantial compliance with such requirement is sufficient to meet any objections on appeal. See *Garret v. Mathews*, 474 F. Supp. 594 (N.D. Ala. 1979), *aff'd*, 625 F.2d 658 (5th Cir. 1980); *In the Matter of Boston & Providence Railroad Corp.*, 428 F.2d 159, 164 (1st Cir. 1970); *State ex rel. Harris v. Annuity and Pension Board*, 87 Wis.2d 646, 275 N.W.2d 668, 675 (1979); *Deep South Broadcasting Co. v. F.C.C.*, 278 F.2d 264, 266 (D.C. Cir. 1960); *Raye and Company Transports, Inc. v. United States*, 314 F. Supp. 1036, 1042 (W.D. Mo. 1970); and *Community & Johnson Corp. v. United States*, 156 F. Supp. 440, 443 (D.N.J. 1957).

9. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are constitutional.

10. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are not without or in excess of jurisdiction.

11. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are reasonable.

12. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are supported by the evidence.

13. Order No. 85-63, the ratification order, meets the requirements of Section 9-17-84, is reasonable and is supported by the evidence.

ORDER

1. Order Nos. 83-170 and 84-382, (together with Order No. 85-63 which implemented Order No. 84-382), to the extent that said Orders approve and establish a 60% pore volume/40% productivity participation formula for the Hatters Pond Unit are invalid for the reasons hereinabove set forth in the Findings of Fact and Conclusions of law.

2. The Unit Agreement and Unit Operating Agreement approved by the Board in said Orders are invalid and of no effect in that the participation formula for the Hatters Pond Unit is invalid, as hereinabove ordered.

3. That the relief requested by Appellant Wallace in his complaints or petitions is denied.

4. Orders Nos. 83-170 and 84-382 to the extent that they deny Wallace's requests that property in Sections 25, 26 and 36, T1S, R1W be included within the Unit area for the Hatters Pond Unit, are hereby affirmed.

5. That this cause is hereby remanded to the State Oil and Gas Board for further proceedings consistent with this Order and the Findings of Fact and Conclusions of Law; and on remand the State Oil and Gas Board shall:

(a) provide all participants in the administrative hearing procedural due process as pertains to discovery;

(b) revise and redetermine, after discovery and further hearing, the productivity factor in the Board's 60% pore volume/40% productivity participation formula so that the revised participation formula for the Hatters Pond Unit fully complies with the statutory requirements of Section 9-17-83(3), *Code of Ala.* (1975);

(c) revise and redetermine the Unit participations of each tract included in the Hatters Pond Unit based upon a 60% pore volume/40% productivity participation formula after the productivity has been revised and redetermined by the Board as provided in (b) above, which revised participations shall relate back to and be effective as of May 1, 1985;

(d) reconsider further whether or not SW/4 of Section 27, S/2 of Section 28, T1S, R1W and SE/4 of Section 8, T2S, R1W should be included within the Hatters Pond Unit, with a participation in the unit production; and

(e) require that the order entered by the Board after remand be in writing ratified or approved by the owners of at least 75% in interest as costs are shared under the revised tract participations and by 75% in interest of the royalty and overriding royalty owners in the unit area, within six months from and after the date the Board enters its order revising the participation formula and the tract participations, failing which Orders Nos. 83-170, 84-382 and 85-63 shall be totally void and of no effect.

6. A certified copy of this Order shall be recorded by the Clerk of this Court in the Office of the Judge of Probate of Mobile County, Alabama, and be indexed in both the direct and reverse real property indices of said Court in the names of Getty Oil Company, and all other parties who signed and/or ratified said Unit Agreement and Unit Operating Agreement.

7. Costs in these proceedings (including the costs of recording and indexing the certified copy of this Order as aforesaid) are assessed against Wallace, as to his petitions only; the remaining costs are assessed against the State Oil and Gas Board, for which let execution issue.

DONE and entered this 5th day of May, 1986.

/s/ Edward B. McDermott
Circuit Judge

APPENDIX C

BEFORE THE STATE OIL AND GAS BOARD OF ALABAMA

**PURSUANT TO A DECISION RENDERED FOLLOWING
SPECIAL SESSIONS OF THE STATE OIL AND
GAS BOARD OF ALABAMA HELD ON APRIL 11, 1984;
JUNE 29, 30, 1984; JULY 5, 6, 7, 12, 13, 14, 1984;
AUGUST 10, 1984; AND SEPTEMBER 10, 1984; THE
FOLLOWING ORDER IS HEREBY PROMULGATED:**

IN RE: ORDER NO. 84-382

**DOCKET NOS. 4-11-841, 4-11-842, 4-11-843,
4-11-844, 4-11-845, 4-11-846A**

These causes came on for hearing before the State Oil and Gas Board of Alabama, and they were consolidated for hearing purposes. All of the petitions relate to the proposed unitization of the Hatter's Pond Field in Mobile County, Alabama. Getty Oil Company filed Docket No. 4-11-841; Paul M. Brown, et al. filed Docket No. 4-11-842; Hatters Alabama Company and Leboc Mobile Company filed Docket No. 4-11-843; Dr. Gerald Wallace filed Docket Nos. 4-11-844 and 4-11-845; and Arden A. Anderson, Dominex, Inc., et al. filed Docket No. 4-11-846A.

FINDINGS

After having heard all the testimony of all the witnesses and all parties concerning notice for these consolidated petitions and after carefully reviewing the evidence and being fully advised of the premises and after due consideration thereof, the Board finds as follows:

1. That due, proper, and legal notice of the hearing of said causes at these special sessions has been given in the manner and form and within the time provided by law and the rules and regulations of this Board and that Getty Oil Company has fully

complied with the notice requirements of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code*. Further, Getty Oil Company made a diligent and extraordinary effort to provide notice to all interested parties by methods in addition to and beyond the requirements of said Rule 400-1-12-.10, including the following: mailing approximately 3,750 letters, first class mail, to known interested parties having obtained lists of interest owners in the Hatter's Pond Field by reviewing title opinion files, Tax Assessor's records, the records of Title Insurance Company of Mobile, Exxon Company's ownership records and other title records; running notices in the *Mobile Press Register*; running a notice in the *Southeastern Oil Review*; and hiring an independent landman to post copies of the notice of this hearing in post offices, convenience stores, filling stations, and other places located in and near the Hatter's Pond Field. Due and legal proofs of newspaper publications are on file with the Board and are part of this record. The Board also finds that the aforementioned Petitioners, other than Getty Oil Company, have also complied with the notice requirements of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code*. The Board has full jurisdiction of these causes.

BOARD ORDER 83-170

Getty Oil Company filed its petition in response to Board Order 83-170, and the Board takes notice of the record in Docket No. 8-19-821 which has been made a part of the record in these proceedings, said Order having remanded Docket No. 8-19-821 to Getty for the following specific actions:

- "1. That a committee of experts, including geologists, geophysicists, and petroleum engineers, be formed by Petitioner for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, and any extensions of the common gas pool therefrom, and also for the purpose of

determining the nature of the pressure communication between the Exxon Wilkie 28 Well (Permit No. 2746) and the wells located to the north of this well. All parties who are affected by the inclusion *vel non* of these sections shall have an opportunity to participate in the committee meetings.

- “2. That Petitioner shall make a redetermination of tract participations based on the tract participation formula enunciated in the findings herein and on the unit area to be proposed. The redetermination shall also be based on the finding herein that mapping of pore volume values higher than actually present in any well is not an acceptable mapping technique for the unitization of the Hatter’s Pond Field. All parties who are affected by said redetermination shall have an opportunity to participate in this procedure.
- “3. That Petitioner shall submit monthly progress reports on unitization to the State Oil and Gas Supervisor. Petitioner is encouraged to commence the committee meetings on or before October 1, 1983.
- “4. That Petitioner shall, in order to prevent waste and protect correlative rights, present a unitization proposal to the Board expeditiously. If such a proposal is not presented to the Board within a reasonable period of time, the Board may consider options including but not limited to a reduction in allowables for the Hatter’s Pond Field.
- “5. That Petitioner shall submit a new unitization petition to the Board, containing a new docket number, and such petition must fully comply with the notice provisions of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code*. Upon receipt of such a petition, the Board shall immediately set a hearing for said Cause.”

FINDINGS

After having heard all of the testimony and after carefully reviewing all of the evidence pertaining to Getty Oil Company's compliance with the five requirements set forth in Board Order 83-170, which are set out above, the Board finds:

2. That Getty Oil Company formed a committee of experts, including geologists, geophysicists, and petroleum engineers for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, and also for the purpose of determining the nature of the pressure communication between the Exxon Wilkie 28-1 Well and the wells located to the north of this well. On August 24, 1983, Getty Oil Company mailed a letter of invitation to participate in the formation of a technical committee to all known interested parties. Parties were advised to designate experts by September 2, 1983, and they were advised that the first committee meeting was scheduled for September 14-15, 1983, in New Orleans, Louisiana. A total of ten technical committee meetings was held in accordance with Board Order 83-170, with the last such meeting on December 15, 1983. In the interim, written monthly reports were submitted to the Oil and Gas Supervisor by the Chairman of the Technical Committee and complete minutes of each meeting were filed with the Oil and Gas Supervisor. On December 19, 1983, a final report of the Hatter's Pond Technical Committee was filed with the Oil and Gas Supervisor. This report was revised on December 30, 1983, and all of these reports and minutes are part of this record. Two interpretations of the geology in Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, were developed by separate groups in the Technical Committee (Interpretation "A" and Interpretation "B"), and the Committee members unanimously agreed that the nature of pressure communication between the Exxon Wilkie 28-1 Well and the wells to the north could not be determined, but it was agreed that there is pressure communication in the Smackover Formation between the nor-

thern part of the field (north of Section 21, Township 2 South, Range 1 West) and southern part of the field (Sections 21, 22, and 28 Township 2 South, Range 1 West).

3. That the Technical Committee calculated and removed the mapped pore volume greater than any pore volume actually present in any well in the Hatter's Pond Field and redetermined the tract participations for all tracts included in the proposed unit area based on the tract participation formula and mapping techniques as set forth in Board Order 83-170.

4. That Getty Oil Company submitted monthly progress reports from the Technical Committee as set forth in Finding 2 above, and that the Technical Committee held its first meeting before October 1, 1983, as also set forth in Finding 2 above.

5. That Getty Oil Company presented a unitization proposal to this Board expeditiously when it filed its petition on February 10, 1984, requesting this Board to unitize the Hatter's Pond Field.

6. That Getty Oil Company's new unitization petition was filed on February 10, 1984, and it received a new docket number, No. 4-11-841. Upon receipt of Getty Oil Company's petition, the Oil and Gas Supervisor scheduled and conducted a pre-hearing conference in Tuscaloosa, Alabama, on March 30, 1984, and the first of a series of Board hearings was held on April 11, 1984 in Tuscaloosa, Alabama.

TECHNICAL COMMITTEE ACTIVITIES PURSUANT TO BOARD ORDER 83-170

Pursuant to Board Order 83-170, Getty Oil Company organized a committee of experts from among the interested parties, including geologists, geophysicists and petroleum engineers for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama as well as any extensions of the common gas pool therefrom. The

committee also was charged with determining the nature of the pressure communication between the Exxon Wilkie 28-1 Well (Permit No. 2746) in Section 28 and the wells north of the Section 28 well. The committee was further charged with redetermining the tract participation factor for each tract based on the tract participation formula enunciated in Finding 16 of Board Order 83-170.

The Technical Committee devoted considerable time from September through December, 1983 evaluating the data available in the southern part (Sections 21, 22, and 28 Township 2 South, Range 1 West) of the Hatter's Pond Field. The work was accomplished by a Geological/Geophysical Sub-Committee and an Engineering Sub-Committee. Conclusions resulting from the work are summarized below.

Geological/Geophysical Sub-Committee

Members of the Geological/Geophysical Sub-Committee agreed on the northern and eastern limit of the productive area to be mapped and the location and extent of faulting within the area to be mapped. Members of the Sub-Committee generally agreed upon mapping rules and assumptions.

Sub-Committee members agreed that the review of seismic data would not be needed to support the mapped interpretations agreed upon by the Committee.

The members of the Geological/Geophysical Sub-Committee could not agree on the following: the gas/water contacts in the Norphlet Formation in the Baldwin 21-15 Well (Permit No. 3697) and the Wilkie 28-1 Well; the rate of dip to be used in mapping the graben area in which the Baldwin 21-7 Well (Permit No. 2222-B) is located; and the westerly and southerly downdip limits of production.

Different interpretations ("A" and "B") were developed by two groups within the Sub-Committee. Interpretation "A" was

adopted by Exxon Company, U.S.A.; Hatters Alabama Company and Lebec Mobile Company; Hilliard Oil and Gas; the Baldwins; Dominex, Inc.; Sabine Production Company; Carl D. Doehring; Crutcher-Tufts; Fred and Emil Meyer; and Getty Oil Company. Getty Oil Company presented evidence in support of Interpretation "A" at these hearings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845 and 4-11-846A).

Interpretation "A" participants used a compromise productive limit in the Wilkie 28-1 Well and the Baldwin 21-15 Well to determine the westerly and southerly downdip limit of production in the area mapped. This was done because of the difficulty in determining the gas/water contact in the Norphlet Formation in these wells. Interpretation "A" participants used a constant rate of throw for the fault north of the Baldwin 21-7 Well and adjusted the contours in the graben to the accepted contours north of Section 21 as a means of establishing the rate of dip for the graben area in which the Baldwin 21-7 Well is located. Interpretation "A" participants instructed the Engineering Sub-Committee to use rules in calculating pore volume that considered the entire Hatter's Pond Field when determining the maximum net pay, porosity, and pore volume that could be used. The maps and rules used by Interpretation "A" participants credit more pore volume and a larger area of production to the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West) than do the maps and rules used by Interpretation "B" participants.

Interpretation "B" was adopted by Paul M. Brown, et al.; AMAX Petroleum Corporation; Mobile County Board of School Commissioners; George Radcliff; and the First National Bank of Mobile. Brown and AMAX presented evidence in support of Interpretation "B" at these hearings. Interpretation "B" participants agreed upon specific gas/water contacts in the Wilkie 28-1 Well and the Baldwin 21-15 Well to use in determining the westerly and southerly downdip limit of production in

the area mapped. Interpretation "B" participants used the results of the dip meter in the Baldwin 21-7 well to establish the rate of dip for mapping in the garden. Interpretation "B" participants instructed the Engineering Sub-Committee to use rules in calculating pore volume that considered only the wells within the different fault blocks in the southern part of the field when determining the maximum net pay, porosity, and pore volume that could be used in each fault block. The maps and rules used by Interpretation "B" participants credit less pore volume and a smaller area of production to the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West) than do the maps and rules used by Interpretation "A" participants.

Arden A. Anderson, Dominex, Inc., et al. submitted Interpretation "C" at these hearings as a third interpretation of the mapping of the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West). This interpretation was not presented or discussed at the Technical Committee meetings held between September 14, 1983, and December 15, 1983. Interpretation "C" was presented even though the two geologists representing Dominex, Inc. in the Geological Geophysical Sub-Committee had signed maps accepting Interpretation "A".

Interpretations "A" and "B" are signed by a total of twelve geologists, three engineers, and one geophysicist. All of these participants worked on preparing these maps. The maps of Anderson-Dominex referred to as Interpretation "C", are signed by one geologist, and that geologist is an employee of Dominex, Inc. Anderson-Dominex located the major fault and the east boundary of the reservoir on their maps differently than the location unanimously agreed upon by the Technical Committee.

FINDINGS

After hearing all of the evidence and after carefully reviewing all of the minutes and exhibits pertaining to the Geological/Geophysical Sub-Committee activities, the Board finds:

7. That Sections 21, 28, and a portion of the Northwest Quarter of Section 22, Township 2 South, Range 1 West, Mobile County, Alabama, should be included within the proposed Hatter's Pond Field Unit and such inclusion would protect the coequal and correlative rights of all the mineral interest owners.

8. That Interpretation "A", as proposed by Getty Oil Company, is supported by Hatters Alabama Company and Leboc Mobile Company; Exxon Company, U.S.A.; Sabine Production Company; Hilliard Oil and Gas; the Baldwins; Carl D. Doehring; Crutcher-Tufts; and Fred and Emil Meyer. Interpretation "A" is supported by the weight of the evidence, is the most reasonable geologic interpretation of the common gas pool in the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West), is prepared in a manner consistent with good mapping concepts and techniques, and is consistent with the findings and directives of Board Order 83-170. The pore volume calculations, based on Interpretation "A" for the southern part of the field, fairly and accurately represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, so that the coequal and correlative rights of all of the mineral interest owners are protected. Therefore, Interpretation "A" should be used in determining the pore volume to be assigned to these sections.

9. That Interpretation "B", as proposed by Paul M. Brown, et al. is also supported by AMAX Petroleum Corporation, Mobile County Board of School Commissioners, George Radcliff, and the First National Bank of Mobile. Interpretation "B" does not follow the directives of Board Order 83-170 and does not fairly represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

10. That Interpretation "C", as proposed by Arden A. Anderson, Dominex, Inc., et al. is dissimilar to the interpreta-

tions presented and agreed to by the other Geological/Geophysical Sub-Committee participants, who mapped the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West), as directed by the Board in Order 83-170. Interpretation "C" does not follow the directives of Board Order 83-170 and does not fairly represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

Engineering Sub-Committee

The Engineering Sub-Committee of the Technical Committee formed by Getty pursuant to Board Order 83-170, Section 1, p. 42, generally agreed that the Wilkie 28-1 Well is in pressure communication with wells located to the north of this well in the Hatter's Pond Field; however, the Sub-Committee could not reach a consensus on the exact nature of this pressure communication. The Engineering Sub-Committee agreed that there is, or probably is, communication in the Smackover Formation between the northern part of the field (north of Section 21, Township 2 South, Range 1 West) and the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West). The Technical Committee agreed that the nature of this pressure communication is unknown and that there was no justification to modify maps for any particular concept.

Pursuant to Board Order 83-170, Section 2, p. 42, the Engineering Sub-Committee removed the mapped pore volume values higher than present in any well in the Hatter's Pond Field, calculated the 60 percent pore volume factor for each tract in the proposed Hatter's Pond Field Unit, calculated the 40 percent productivity factor for each tract in the proposed Hatter's Pond Field Unit, and determined the tract participation for each tract in the proposed unit area, including Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

FINDINGS

After hearing all the evidence and after carefully reviewing all of the minutes and exhibits pertaining to the Engineering Sub-Committee activities, the Board finds:

11. That the Exxon Wilkie 28-1 Well is in pressure communication with other wells in the Hatter's Pond Field, but the exact nature of the pressure communication is unknown and need not be determined.

12. That the Engineering Sub-Committee redetermined pore volume and tract participation for each tract in the proposed Hatter's Pond Field Unit as directed by Board Order No. 83-170.

DATA FROM THE DRILLING AND COMPLETION OF THE S.M. ADAMS 9-16 No. 1 WELL

The S.M. Adams 9-16 No. 1 Well (Permit No. 3995) was completed in Section 9, Township 2 South, Range 1 West in the Hatter's Pond Field, Mobile County, after the Technical Committee concluded its series of meetings on December 15, 1983. The drilling and completion of the S.M. Adams 9-16 Well provided data pertaining to the proposed Hatter's Pond Field Unit. A Supervisor's Conference was held on July 10, 1984, to consider the data provided by the S.M. Adams 9-16 Well. Seven parties, including Exxon Company, U.S.A.; Mobile County Board of School Commissioners; Hatters Alabama Company and Leboc Mobile Company; Getty Oil Company; George Radcliff; Arden A. Anderson, Dominex, Inc., et al.; and AMAX Petroleum Corporation participated in the meeting.

At the Supervisor's Conference, agreement was reached as to the formation tops, net pay, average porosity, and pore volume assignments for the Smackover and Norphlet Formations penetrated by the drilling of the S.M. Adams 9-16 Well. However, total agreement could not be reached on the mapping of pore volume in the area of the S.M. Adams 9-16 Well.

Consensus pore volume maps for the Smackover and Norphlet Formations, and a consensus total pore volume map were prepared by and/or endorsed by Exxon Company, U.S.A.; Mobile County Board of School Commissioners; Hatters Alabama Company and Leboe Mobile Company; and Getty Oil Company. These revised pore volume maps did not change the productive limit for the proposed Hatter's Pond Field Unit north of Section 21, Township 2 South, Range 1 West, as set forth in Board Order 83-170, and confined the pore volume changes to an area near the Adams 9-16 Well.

Alternate Smackover net pay, average porosity, and pore volume maps were prepared by George Radcliff and were endorsed by Paul M. Brown, et al. The Radcliff Smackover pore volume map assigns more Smackover pore volume to the area of Section 9, Township 2 South, Range 1 West, than the consensus Smackover pore volume map.

Arden A. Anderson, Dominex, Inc., et al. prepared a Smackover structure map which incorporated the data obtained by the drilling of the S.M. Adams 9-16 Well. The Anderson-Dominex structure map represents an interpretation of the structural geology of the Hatter's Pond Field area.

FINDINGS

After reviewing all of the data, exhibits, and evidence provided by the drilling and completion of the S. M. Adams 9-16 Well located in Section 9, Township 2 South, Range 1 West, Mobile County, Alabama, the Board finds:

13. That the data provided by the drilling and completion of the S.M. Adams 9-16 Well necessitates modification to Getty Oil Company's total pore volume map (Getty Exhibit 15, Docket No. 4-11-841) in order to protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

14. That all parties participating in the Hatter's Pond unitization hearing (Docket Nos. 4-11-841 through 4-11-846A) had full opportunity to review the data, discuss the data, and present interpretations of the data provided by the drilling and completion of the S.M. Adams 9-16 Well. This opportunity was provided to all parties during a Supervisor's Conference on July 10, 1984, and during the Hatter's Pond unitization hearings, and all parties were allowed to submit map interpretations using the data from the Adams 9-16 Well prior to the closing of the Hatter's Pond unitization hearings.

15. That the Smackover and Norphlet Formation top determinations and net pay, average porosity, and pore volume assignments for the Smackover and Norphlet Formations, resulting from the drilling and completion of the S.M. Adams 9-16 Well and as agreed to at the Supervisor's Conference on July 10, 1984, are reasonable and accurate.

16. That the map labeled "Total Pore Volume as Amended" dated July 13, 1984, as supported by Exxon Company, U.S.A.; Hatters Alabama Company and Leboc Mobile Company; Mobile County Board of School Commissioners; and Getty Oil Company, represents a consensus of the parties and is consistent with the pore volume mapping techniques as directed by Board Order 83-170. The map labeled "Total Pore Volume as Amended" dated July 13, 1984, accurately represents the pore volume changes required by the drilling and completion of the S.M. Adams 9-16 Well and was used to redetermine the pore volume assignment for each tract in the proposed Hatter's Pond Field unit. The pore volume assigned for each tract is shown in the column labeled "Supervisor's Conference Consensus Map" on Exhibit A, which is attached hereto and made a part of this Order. These redetermined pore volume assignments are fair and equitable and will protect the coequal and correlative rights of all the mineral interest owners. Therefore, the Radcliff Smackover pore volume map is inappropriate as the map to be used for determining the amount of Smackover pore volume present in the area of Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

17. That the Arden A. Anderson, Dominex, Inc., et al. Smackover structure map (dated July 20, 1984) is technically inaccurate and inappropriate as the map to be used for determining the amount of total pore volume present in the area of Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

PARTICIPATION FORMULA

Finding 15 of Board Order 83-170 states that a tract's average daily production rate, as determined from a well's best month of production on the tract, is appropriate as a productivity factor for a Hatter's Pond Field Unit. The Board found that this productivity factor, in proper combination with a pore volume factor, would more accurately determine a tract's relative contribution than would a pore volume factor alone. The Board also found that a fair and reasonable tract participation formula for a Hatter's Pond Field Unit is a formula that consists of a 60 percent pore volume factor and a 40 percent productivity factor (Finding 16, Board Order 83-170).

Paul M. Brown, et al. petitioned the Board to unitize the Hatter's Pond Field based on a participation formula consisting of 75 percent pore volume and 25 percent productivity. Brown contends that pore volume as a factor should be given more weight than it was afforded in Board Order 83-170.

Hatters Alabama Company and Leboc Mobile Company petitioned the Board to amend the participation formula enunciated in Board Order 83-170 to a participation formula based 60 percent on pore volume and 40 percent on productivity with productivity defined as a tract's average daily production rate as determined from a well's best month of production on the tract during the period beginning January 1, 1983, and ending February 29, 1984. Hatters-Leboc contend that such a participation formula would more accurately represent what each tract would contribute to the proposed Hatter's Pond Field Unit.

AMAX Petroleum Corporation contends that a productivity factor in a participation formula for a Hatter's Pond Field Unit should be given considerable weight. AMAX argues that the participation formula as enunciated in Board Order 83-170 does not give sufficient pore volume credit to Section 35, Township 1 South, Range 1 West, in the proposed Hatter's Pond Field Unit.

Getty Oil Company, as directed by the Board, has presented a new petition to unitize the Hatter's Pond Field with the participation formula as enunciated in Finding 16 of Board Order 83-170. This formula consists of the 60 percent pore volume factor and the 40 percent productivity factor. Getty maintains that this participation formula is fair and reasonable, and will protect the coequal and the correlative rights of all the mineral interest owners. Getty contends that any modifications to the participation formula are uncalled for, and unsupported by any new evidence. Getty witnesses testified that the participation formulas proposed by Brown and Hatters-Leboc will increase the interests of the proposing parties at the expense of other owners in the proposed unit. Expert witnesses for Getty argue that the limited time period suggested by Hatters-Leboc would be less representative of tract contribution than the time defined in Board Order 83-170 because of such factors as scale and/or salt buildup, corrosion, time of initial completion, time of stimulation, varying perforated intervals, and plant capacity. Getty further maintains that AMAX presented no maps or other geological evidence to indicate that there is more pore volume underlying Section 35, Township 1 South, Range 1 West, than as shown on the total pore volume map (Getty Exhibit 15, Docket No. 4-11-841).

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence in regard to participation formula, the Board finds:

18. That the voluminous record now assembled on the Hatter's Pond Field unitization hearings (Docket Nos. 8-19-821 and 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, and 4-11-846A) contains considerable testimony and evidence from various parties regarding the factors that should be used in the participation formula for unitization. Factors suggested for use included pore volume, cumulative production, highest tested capacity, productive surface acres, average daily production, pressure adjustment factors, and state of depletion.

19. That the Board considered substantial evidence and testimony concerning various factors that should be used in the participation formula for the unitization of the Hatter's Pond Field. These factors included, but were not limited to, those that were presented and testified to during the previous hearings (Docket No. 8-19-821) and at these hearings (Docket Nos. 4-11-841 through 4-11-846A). Also, the Board considered the weight and the merits of each factor in determining a fair and reasonable participation formula in the issuance of Board Order 83-170 and in the issuance of this Order.

20. That during the previous Hatter's Pond unitization hearings (Docket No. 8-19-821) and during these hearings (Docket Nos. 4-11-841 through 4-11-846A), the Board was presented with evidence, including graphs depicting the month-by-month production from wells in the Hatter's Pond Field. Many of the graphs presented during these hearings (Docket Nos. 4-11-841 through 4-11-846A) were either identical to or were modifications of the graphs presented at the previous Hatter's Pond unitization hearings (Docket No. 8-19-821). Also, monthly production records which include full well stream production from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) are on file with the Board and the information was made a part of the record in Docket Nos. 8-19-821 and 4-11-841 through 4-11-846A and carefully considered by the Board in the issuance of Order 83-170 and in the issuance of this Order.

21. That the participation formula enunciated in Finding 16 of Board Order 83-170 was determined after careful consideration of voluminous quantities of production and operating data. Production and operating data are continually being generated in the Hatter's Pond Field and, if unitization of this field is to be accomplished, the Board must determine when sufficient quantities of such data are available so as to allow for the determination of the fair and equitable participation formula. Sufficient data are now available, and the consideration of any additional production, pressure, and operating data from the Hatter's Pond Field is not necessary for the field to be unitized in a fair and equitable manner.

22. That numerous participation formulas in addition to the 60-40 formula enunciated in Finding 16 of Board Order 83-170 were considered by this Board prior to the issuance of Board Order 83-170. These formulas included, but were not limited to, formulas consisting of 100 percent pore volume; of 75 percent pore volume and 25 percent productivity; and of 50 percent pore volume and 50 percent productivity.

23. That the fair and reasonable tract participation formula for the proposed Hatter's Pond Field Unit is the formula consisting of the 60 percent pore volume factor and the 40 percent productivity factor, as those factors are enunciated in Finding 16 of Board Order 83-170. The 60 percent pore volume factor is to be calculated from the consensus total pore volume map, labeled "Total Pore Volume as Amended" and dated July 13, 1984, which incorporates Interpretation "A", includes the data from the S. M. Adams 9-16 Well located in Section 9, Township 2 South, Range 1 West, and is consistent with the pore volume mapping techniques directed by Board Order 83-170. The 40 percent productivity factor is to be calculated from a tract's average daily production rate as determined from a well's best month of production on the tract through the last full month of production prior to the issuance of this Order, i.e. through September 30, 1984. Therefore, the monthly production

records, as reflected by the full well stream production, from all wells in the Hatter's Pond Field through September 30, 1984 (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) should be made a part of the record in Docket Nos. 4-11-841 through 4-11-846A. Tract participation as shown on Getty Exhibit 19 (Docket No. 4-11-841) which is attached hereto as Exhibit B to this Order, should be modified to protect the coequal and correlative rights of all the mineral interest owners because it does not include every tract's average daily production rate as determined from a well's best month of production on the tract through September 30, 1984, and does not include the data from the S.M. Adams 9-16 Well. Getty Oil Company should redetermine the productivity factor assignment for each tract and should recalculate the tract participation for each tract. Getty then should prepare an amended Exhibit B, which includes the pore volume assignment for each tract (shown on attached Exhibit A to this Order, in the column labeled "Supervisor's Conference Consensus Map"); a tabulation of the productivity assignment for each tract; and the tract participation for each tract. Getty should submit an amended Exhibit B to the Board within 15 days of the issuance of this Order. Amended Exhibit B should be attached to and made a part of this Order. The 60-40 participation formula as enunciated above will protect the coequal and correlative rights of all mineral interest owners, and is based upon the relative contribution which each tract or interest is expected to make during the course of unit operations. The inclusion in the proposed unit of Section 21, that portion of Section 22 lying north and west of the west right-of-way line of Interstate Highway I-65, and Section 28, all in Township 2 South, Range 1 West, Mobile County, Alabama does not change the fact that the 60-40 formula as enunciated above represents the fair and reasonable tract participation formula for the proposed Hatter's Pond Field Unit.

24. That Paul M. Brown, et al. presented insufficient evidence to warrant a change in either the 60 percent pore

volume factor or the 40 percent productivity factor comprising the participation formula as enunciated in Finding 16 of Board Order 83-170 and in Finding 23 of this Order. The 60-40 formula as enunciated in Finding 23 of this Order is the appropriate tract participation formula for the proposed Hatter's Pond Field Unit because it takes into account the spacing pattern of wells in the field, the heterogeneity of the reservoir, the pore space available for hydrocarbon storage, the production history of the wells in the field, and the relative contribution which each tract or interest is expected to make during the course of unit operations. Therefore, a participation formula with a 75 percent pore volume factor and a 25 percent productivity factor is inappropriate and would not represent what each tract or interest is expected to make during the course of unit operations.

25. That Hatters Alabama Company and Leboc Mobile Company presented insufficient evidence to warrant a change in either the 60 percent pore volume factor or the 40 percent productivity factor comprising the participation formula as enunciated in Finding 16 of Board Order 83-170 and in Finding 23 of this Order. The Hatters-Leboc proposed limited time period for the computation of the 40 percent productivity factor (beginning January 1, 1983 and ending February 29, 1984) does not adequately consider the varying dates that the wells were drilled, completed, worked over, treated, or the condition and status of the wells. The productivity factor, as defined in Finding 23 of this Order, adequately takes into account all the necessary parameters required to establish a fair and equitable productivity factor. Therefore, the limited time period for the computation of the 40 percent productivity factor, as proposed by Hatters-Leboc, is inappropriate and would not result in a participation formula that would be representative of what each tract or interest is expected to make during the course of unit operations.

26. That, as previously found by the Board in Finding 20 of Board Order 83-170, adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field. The evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) is insufficient to warrant altering this finding. Therefore, Finding 20 of Board Order 83-170 is reaffirmed.

27. That any adjustments or modifications to the participation formula consisting of the 60 percent pore volume factor and the 40 percent productivity factor, as enunciated in Findings 15 and 16 of Board Order 83-170 and in Finding 23 of this Order, would neither be advantageous nor necessary for the Hatter's Pond Field to be unitized in a fair and equitable manner, and such adjustments would not protect the coequal and correlative rights of all the mineral interest owners. Therefore, Findings 15 and 16 of Board Order 83-170 are reaffirmed.

28. That, as previously found by the Board in Finding 21 of Board Order 83-170, the Petitioner (Getty Oil Company), in the mapping of pore volume for tract 3500 (Section 35, Township 1 South, Range 1 West) in the proposed Hatter's Pond Field Unit, used the best available data for the determination of the pore volume attributable to said tract (Section 35). AMAX Petroleum Corporation failed to present maps or credible evidence to indicate that there is more pore volume underlying Section 35, Township 1 South, Range 1 West, than as shown on the consensus total pore volume map labeled "Total Pore Volume as Amended" and dated July 13, 1984, that resulted from the Supervisor's Conference of July 10, 1984. Therefore, Finding 21 of Board Order 83-170 is reaffirmed.

29. That the wells in the Hatter's Pond Field have been operated in a prudent manner, and no wells have been unduly penalized by primary production practices.

STATE OF DEPLETION-SEPARATE RESERVOIRS- PRESSURE SURVEYS

In Finding 20 of Board Order 83-170 the Board states that adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field.

Arden A. Anderson, Dominex, Inc., et al. filed a petition requesting a continuance of the unitization hearings and to require fieldwide bottom hole pressure build-up surveys in the Hatter's Pond Field. Anderson-Dominex contend that this evidence is needed to confirm that there are multiple reservoirs in the Hatter's Pond Field in different stages of depletion, and that the state of depletion of each reservoir must be determined and included in any participation formula. Anderson-Dominex maintain that the heterogeneity of the Smackover Formation in the Hatter's Pond Field demonstrates the existence of separate reservoirs.

An engineering witness for Anderson-Dominex proposed a correlation of shutin surface pressure build-up surveys with bottom hole pressure build-ups in lieu of measured bottom hole pressure build-up surveys when measured bottom hole pressure build-up surveys cannot be obtained because of various wellbore problems or because of high risks and costs.

Hatters Alabama Company and Leboc Mobile Company contend that the productivity factor as proposed by Hatters-Leboc would be more representative of the state of depletion of a tract than the productivity factor as defined in Board Order 83-170.

Paul M. Brown, et al. contend that the risk of losing wells is too great and that no new evidence would be obtained from ad-

ditional fieldwide bottom hole pressure build-up surveys. Brown maintains that the Anderson-Dominex petition will further delay unitization of the Hatter's Pond Field.

Getty Oil Company's technical witnesses contend that there is no evidence of separate mappable reservoirs in the proposed Hatter's Pond Field Unit and that adjustments to pore volume for pressure-production history and remaining recoverable reserves should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons beneath each tract. Getty maintains that additional fieldwide bottom hole pressure build-up surveys would be unduly costly and could result in the loss of a well or wells. Getty further contends that bottom hole pressures would only relate to the performance of wells and would not assist in the measurement of what a tract is expected to contribute to unit production. Getty also maintains that no evidence was presented to demonstrate the accuracy of extrapolated shut-in bottom hole pressures using the Anderson-Dominex procedures.

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence in regard to pressure surveys, separate reservoirs, and state of depletion, the Board finds:

30. That the Board in Finding 20, Order 83-170 found that the weight of evidence indicated that adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field. The evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) is insufficient to justify altering this finding.

31. That a correlation of shut-in surface pressures with shut-in bottom hole pressures has not been proven sufficiently accurate to be used in lieu of bottom hole pressure build-up surveys for wells in the Hatter's Pond Field.

32. That with the history of nine years of production and the voluminous amounts of pressure data obtained, additional fieldwide bottom hole pressure build-up surveys or any other pressure surveys are not needed to assist in determining the relative contribution which each tract or interest is expected to make during the course of unit operations.

33. That mechanical failures have occurred in the Hatter's Pond Field during the performance of bottom hole pressure build-up surveys that have necessitated reworking operations on certain wells and, on a few occasions, have even required that a well be sidetracked or redrilled (Board Order 82-91, page 2, paragraph III).

34. That the running of additional fieldwide bottom hole pressure build-up surveys in the Hatter's Pond Field will cause the working interest owners to incur undue and unnecessary risks and expenses, could result in the loss of a well or wells, and could result in the drilling of an unnecessary well or wells.

35. That additional fieldwide bottom hole pressure build-up surveys would be neither advantageous nor necessary for the Hatter's Pond Field to be unitized in a fair and equitable manner to all owners of interest in the field, and the running of such pressure build-up surveys would significantly delay unitization, cause substantial waste, and would not protect the coequal and correlative rights of all the mineral interest owners.

36. That because of the heterogeneity of the Hatter's Pond Field reservoir and the large variations among the wells with respect to the thickness of pay encountered, the amount of pay perforated, and the depths of the perforations, bottom hole pressure surveys cannot be used to determine the relative con-

tribution that each tract or interest is expected to make during the course of unit operations.

37. That Board Order 83-170 recognized the heterogeneity of the Hatter's Pond Field reservoir and the evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) does not indicate that such heterogeneity results in separate mappable reservoirs. No credible evidence has been presented by any of the parties at these hearings (Docket Nos. 4-11-841 through 4-11-846A) or the previous hearings (Docket No. 8-19-821) to prove the existence of separate mappable reservoirs in the Hatter's Pond Field.

38. That the evidence presented by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation does not demonstrate that there are separate mappable reservoirs in the Hatter's Pond Field. After this Board was ordered by the Circuit Court of Tuscaloosa County (Civil Action No. CV84-252) to hear the new evidence of Arden A. Anderson, Dominex, Inc., et al., witnesses for Anderson-Dominex adopted exhibits prepared by Hatters Alabama Company and Leboc Mobile Company that were presented at the previous hearings (Docket No. 8-19-821) and considered by the Board prior to the issuance of Board Order 83-170.

**UNIT AREA: INCLUSION OF PORTIONS OF
SECTIONS 25, 26, AND 36, TOWNSHIP 1 SOUTH,
RANGE 1 WEST, MOBILE COUNTY, ALABAMA**

The productive limit in part of the northern area of the Hatter's Pond Field was a topic of considerable controversy and debate during the Board's hearing of Docket No. 8-19-821. During that hearing, Richland Exploration Company, Inc. presented technical exhibits and testimony in support of including a portion of Section 36, Township 1 South, Range 1 West, Mobile County, Alabama, within a proposed field unit.

Based upon geological data and evidence presented on his behalf at that hearing, Dr. Gerald Wallace maintained that parts of Sections 25, 26, and 36, Township 1 South, Range 1 West, Mobile County, Alabama, lie within the productive limit and should, therefore, be included in a proposed field unit.

After hearing many hours of testimony and examining well data and many technical exhibits, the Board, in Order 83-170, specifically addressed the issue of including portions of Sections 25, 26, and 36 within a proposed field unit. The Board made specific findings and concluded that insufficient technical data were submitted to justify including into a proposed unit any portions of Sections 25, 26, and 36 (Order 83-170, Findings 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35). A determination was made by the Board that the evidence did not support any alteration of the northern limit of Getty Oil Company's originally proposed unit area, and that the inclusion of any portions of Sections 25, 26, and 36 would unjustly dilute the mineral interests and would not protect the correlative rights of the mineral interest owners. The northern productive limit as proposed by Getty was agreed to during the meeting of the earlier Unitization Geological Sub-Committee, and the Board found that this northern productive limit was determined by valid interpretations of all well data and good mapping concepts and techniques.

Following the issuance of Board Order 83-170, Dr. Wallace commissioned a seismic line to be run through an area that traverses the southern portion of Section 25, the central portion of Section 26, the northern portion of Section 27, and continues in a west-northwesterly direction into the central portion of Section 20, all in Township 1 South, Range 1 West, Mobile County, Alabama. Dr. Wallace also employed experts trained in the fields of geophysical seismic interpretation and computer modeling to interpret the data from that seismic line, hereinafter referred to as line L-1.

Dr. Wallace contends that the findings of Board Order 83-170 are against the weight of the evidence presented at the hearings in Docket No. 8-19-821, and that the data provided by his seismic line L-1 support the structural geologic maps submitted in support of his case during the hearings in Docket No. 8-19-821 and during the more recent unitization hearings (Docket Nos. 4-11-841 through 4-11-846A). He believes that portions of Sections 25, 26, and 36 are underlain by hydrocarbons and that the productive limit of the field may even extend farther north to include part of Section 24, Township 1 South, Range 1 West, Mobile County, Alabama. He maintains that it is not economically feasible to drill a well in the area of Section 25, Township 1 South, Range 1 West; that there has been drainage of hydrocarbons from this area; and that the drilling of a well in the area of Section 25 is unnecessary and would constitute waste in direct contravention of the oil and gas laws of Alabama.

Geophysical seismic and computer modeling specialists testified that the data from line L-1 support the geological structure maps previously submitted on behalf of Dr. Wallace. The Smackover and Norphlet reflectors as identified on Wallace Exhibits B-3 and B-3A (line L-1) appear to display an eastward dip of the Smackover and Norphlet Formations into the large down-to-the-east fault. Dr. Wallace's expert witnesses, however, maintain that the apparent eastward dip of these formations is due to a "fault shadow" or velocity pushdown phenomenon, which, in this particular instance, requires a 1,300 foot upward correction beneath the fault. According to the testimony of these witnesses, if such a vertical correction were applied to the seismic data, the Smackover and Norphlet Formations beneath the fault would then lie structurally higher than the -18,300 foot depth for the lower limit of production and the dip would then actually be toward the west and away from the fault.

An expert in the field of seismic interpretation testified on behalf of Getty Oil Company that Dr. Wallace's witnesses failed to account properly for the differing interval velocities on the upthrown side versus the downthrown side of the fault seen on line L-1. According to the Getty witness, the velocity assumptions used by Dr. Wallace's witnesses were erroneous, as would be any vertical correction of the data to alter the apparent east dip to show west dip. Evidence including a seismic line (line 1183), which is located within the proven productive limit of the field, was submitted by Getty for the purpose of demonstrating that dip direction and rates as seen on seismic lines in this area do not require the type of vertical correction and adjustment such as that made on line L-1 by Dr. Wallace's seismic specialists.

Getty maintains that no new evidence has been presented to justify any changes in the proposed Hatter's Pond Field Unit area north of Section 21, Township 2 South, Range 1 West as set forth in Board Order 83-170, and that a reasonable interpretation of all subsurface data precludes the inclusion of portions of Sections 25, 26, and 36 in a Hatter's Pond Field Unit. Getty argues that the economic data presented on behalf of Dr. Wallace clearly contain computation errors, and that, if the other technical exhibits submitted for Dr. Wallace are assumed to be accurate, then it would be a highly profitable venture to drill a well on the acreage in question. Representatives for Getty also contend that, if such a well encountered hydrocarbons and the acreage is proven to be underlain by an extension of the unitized formation of the Hatter's Pond Unit, then Section 9-17-85 of the *Code of Alabama* (1975) would clearly allow unit enlargement to incorporate the acreage into the unit.

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence concerning the inclusion of portions of Sections 25, 26, and 36, Township 1 South, Range 1 West,

Mobile County, Alabama, in a Hatter's Pond Field Unit, the Board finds:

39. That Dr. Wallace failed to provide a definitive and acceptable method for determining the boundary of the reservoir that he contends is present in the area of Sections 25, 26, and 36, Township 1 South, Range 1 West. He further did not provide a definitive and acceptable method for determining the exact amount of productive acreage that he contends is not already included in a producing unit of the Hatter's Pond Field. Dr. Wallace has left to the discretion of the Board these critical determinations and the exact tract participation for Sections 25, 26, and 36, should the evidence prove that portions of these sections are underlain by recoverable hydrocarbons of the Hatter's Pond Field reservoir. However, there is no need to determine a tract participation for these sections because the evidence does not prove that hydrocarbons are present beneath any portions of these sections.

40. That the testimony and evidence, including the location, interpretation, and computer modeling of seismic line L-1, does not establish that the Hatter's Pond Field structure and hydrocarbon pool are present beneath any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West.

41. That the geological data provided by wells and the data provided by seismic line L-1 are insufficient to establish that reservoir grade zones of porosity are present beneath any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West.

42. That the weight of the evidence presented in the hearing of Docket No. 8-19-821 clearly supports Findings 26 through 35 in Board Order 83-170 which pertain to Sections 25, 26, and 36, Township 1 South, Range 1 West and the northernmost productive limit of the Hatter's Pond Field reservoir.

43. That the exhibits and testimony relating to and resulting from the data provided by seismic line L-1 and all other

available data do not alter Findings 26 through 35 in Board Order 83-170 regarding the northernmost productive limit of the Hatter's Pond Field reservoir. Therefore, Findings 26 through 35 of Board Order 83-170 are reaffirmed.

44. That the weight of the evidence supports the productive limit of the proposed Hatter's Pond Field Unit as set forth in Board Order 83-170 and as proposed by Getty Oil Company for the area north of Section 21, Township 2 South, Range 1 West, Mobile County, Alabama.

45. That the evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) and at the previous hearings (Docket No. 8-19-821) and the technical data available from the Hatter's Pond Field are insufficient to justify including any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West, in the Hatter's Pond Field Unit. The inclusion of any portions of these sections would not protect the coequal and correlative rights of all the mineral interest owners, because such inclusion would unjustly dilute the mineral interests in those tracts that have been proven to be underlain by recoverable hydrocarbons by substantial evidence and technical data.

UNIT AREA: INCLUSION OF PORTIONS OF SECTIONS 27 AND 28, TOWNSHIP 1 SOUTH, RANGE 1 WEST, AND PORTIONS OF SECTIONS 8, 11 AND 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST, MOBILE COUNTY, ALABAMA

Getty Oil Company's expert witnesses testified that portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West, Mobile County, Alabama, are underlain by recoverable hydrocarbons as indicated by the nearby well control, the data obtained by the drilling of wells, and a reasonable interpretation of the productive limit of the proposed Hatter's Pond Field Unit. Getty further testified that portions of these sections will contribute to unit operations, and therefore should share in unit production because those tracts do not contain sufficient productive acreage of pore volume to justify or require a well thereon.

Arden A. Anderson, Dominex, Inc., et al. contend that no property should be included in the proposed unit area that is not now included within a developed area (producing unit).

Dr. Gerald Wallace maintains that the inclusion of portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West, Mobile County, Alabama, in the proposed Hatter's Pond Field Unit is no different than his proposal for including portions of Sections 25, 26, and 36, Township 1 South, Range 1 West, Mobile County, Alabama.

Expert witnesses for Getty testified that there are significant differences in Dr. Wallace's proposal to include portions of Sections 25, 26, and 36, Township 1 South, Range 1 West as compared to the inclusion of portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West. Getty maintains that only small portions of Sections 27, 28, 8, 11, and 22 are included within the productive limit of the Hatter's Pond reservoir; and it is the productive limit within the tract, not the boundary of the unit area surrounding the tract that determines the tract's participation in the unit. The witnesses also testified that the portions of Sections 27, 28, 8, 11, and 22 that are in the proposed Hatter's Pond Field Unit were included on the basis of nearby well control and a reasonable interpretation of the boundary of the productive limit of the proposed unit as based on the geologic interpretations by the earlier Unitization Geological Sub-Committee, whereas there is no well control to justify including portions of Sections 25, 26, and 36.

FINDINGS

After having heard all of the testimony and after carefully reviewing all the evidence to ascertain if portions of Sections 27 and 28, Township 1 South, Range 1 West, Mobile County, Alabama, and portions of Sections 8, 11, and 22, Township 2

South, Range 1 West, Mobile County, Alabama, should be included in the proposed unit area, the Board finds:

46. That the weight of the geologic and engineering evidence supports Getty Oil Company's position that recoverable hydrocarbons underlie portions of the Southeast Quarter of Section 8 and the Northwest Quarter of Section 11, Township 2 South, Range 1 West, and portions of the Southwest Quarter of Section 27 and the South Half of Section 28, Township 1 South, Range 1 West. Because portions of Sections 8, 11, 27, and 28 will contribute to unit operations, but do not contain sufficient productive acreage or pore volume to justify the drilling of a well thereon, they should be included in the proposed unit area in order to protect the coequal and correlative rights of all the mineral interest owners. The productive limit of the proposed unit, as set forth in Finding 25 of Board Order 83-170 for the proposed Hatter's Pond Field Unit north of Section 21, Township 2 South, Range 1 West, Mobile County, Alabama, is reaffirmed.

47. That the Smackover and Norphlet net pay isopach and total pore volume interpretations ("A" and "B") resulting from the Geological/Geophysical Sub-Committee and the Smackover and Norphlet net pay isopach interpretations of Arden A. Anderson, Dominex, Inc., et al. for the southern part (Sections 21, 22, and 28, Township 2 South, Range 1 West) of the proposed Hatter's Pond Field Unit illustrate that a part of Section 22, Township 2 South, Range 1 West is underlain by recoverable hydrocarbons. Interpretations "A" and "B" both indicate pore volume to be present in part of the northwest quarter of this Section. Part of the northwest quarter of Section 22, Township 2 South, Range 1 West (as shown on Exhibit C which is attached hereto and made a part of this Order) should not be excluded from the proposed unit, because the exclusion of this area would result in confiscation of the property of the mineral interest owners.

48. That the evidence clearly demonstrates the necessity to include portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11 and 22, Township 2 South, Range 1 West in the proposed Hatter's Pond Field Unit. Therefore, the productive limit of the proposed Hatter's Pond Field Unit should be as shown on Exhibit C which is attached to this Order. The establishment of this productive limit for the proposed unit area is necessary in order to protect the coequal and correlative rights of all mineral interest owners.

PRESSURE MAINTENANCE — GAS CYCLING

Getty Oil Company presented expert testimony that gas cycling secondary recovery operations in the proposed Hatter's Pond Field Unit, with Sections 21 and 28, Township 2 South, Range 1 West, included in the proposed unit, and beginning January 1, 1986, would recover an estimated additional 9,874,657 Mcf of sales gas and 15,904,247 barrels of liquid hydrocarbons. An expert engineering witness for Getty presented standard economics of gas cycling operations using a 5 percent inflation factor for cost and sales prices and a 10 percent present worth discount factor. These economic data show that an estimated additional investment of \$114,708,978 and estimated additional operating costs of \$225,342,932 will yield estimated additional working interest gross revenue of \$1,077,985,860 for an additional working interest net revenue of \$737,933,950 having a present worth of \$116,883,070; that the royalty owners will receive an estimated additional gross revenue of \$162,504,198 having a present worth of \$39,933,579; and that the State of Alabama will receive an estimated additional \$124,049,006 in taxes having a present worth of \$30,483,648.

A witness for AMAX Petroleum Corporation stated that Getty's economic projections yielded a discounted cash flow rate of

return of 18 percent and that 18 percent was a marginal rate of return. AMAX also contends that a 5 percent escalation of sales prices over the entire 25-year period is too high.

FINDINGS

After having heard all the testimony and after having carefully reviewed the evidence in regard to the need for and the economic feasibility of pressure maintenance by gas cycling, the Board finds:

49. That the evidence presented by Getty Oil Company establishes that additional hydrocarbons will be recovered by gas cycling secondary recovery operations from the proposed Hatter's Pond Field Unit.

50. That evidence presented by Getty Oil Company establishes the profitability of gas cycling secondary recovery operations for the proposed Hatter's Pond Field Unit.

51. That the estimated total cost of conducting secondary recovery operations in the proposed Hatter's Pond Field Unit will not exceed the value of the estimated total additional hydrocarbons to be recovered through enhanced recovery methods.

52. That, in order to prevent waste and the irrevocable loss of hydrocarbons and to protect the coequal and correlative rights of all mineral interest owners, gas cycling secondary recovery operations should be conducted in the Hatter's Pond Field.

NEED FOR UNITIZATION

The need for unitization in the Hatter's Pond Field was addressed in great detail during the Board's hearing of Docket No. 8-19-821. During that hearing, expert witnesses for Getty Oil Company presented numerous technical exhibits and considerable testimony setting forth the reasons and necessity for unitization. Furthermore, no party presented evidence to refute

Getty's position that unitization of the Hatter's Pond Field is needed for the purpose of initiating and maintaining a partial pressure maintenance program.

After hearing the testimony and carefully reviewing all pertinent evidence, the Board, in Order 83-170, made specific findings regarding the need for unitization and concluded that there is an unquestionable need for the Hatter's Pond Field to be unitized (Finding 2, Board Order 83-170). The Board further found that unitization is necessary because of the unique geologic characteristics of the Hatter's Pond Field and the hostile geologic environment for drilling and production evident therein. Unitization would be beneficial for the continuation of successful primary recovery operations and is needed for the successful initiation and maintenance of secondary recovery operations. Unitization is necessary in order to prevent the potential loss of recoverable hydrocarbons and in order to prevent the drilling of unnecessary wells (Findings 5, Board Order 83-170).

Determinations were made by the Board in Order 83-170 that unitization of the Hatter's Pond Field is in the interest of conservation (Finding 6, Board Order 83-170) and that an undue delay of unitization and the initiation of enhanced recovery procedures will result in the irrevocable loss of hydrocarbons and potential harm to the reservoir (Finding 7, Board Order 83-170).

FINDINGS

After all the testimony and after carefully reviewing all the evidence concerning the need for unitization in the Hatter's Pond Field, the Board finds:

53. That no party at the previous hearings (Docket No. 8-19-821) and no party at these hearings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, 4-11-846A) presented credible evidence to refute Getty's position that unitization of the Hatter's Pond Field is needed for the purpose of initiating

and maintaining a partial pressure maintenance program. Therefore, Finding 3 of Board Order 83-170 is reaffirmed.

54. That unitization is necessary in order to prevent the potential loss of recoverable hydrocarbons and in order to prevent the drilling of unnecessary wells in the proposed Hatter's Pond Field Unit. Unitization is also necessary because of the unique geologic characteristics of the Hatter's Pond Field and the hostile geologic environment for drilling and production evident therein. Unitization would be beneficial for the continuation of successful primary recovery operations and is needed for the successful initiation and maintenance of secondary recovery operations. Therefore, Finding 5 of Board Order 83-170 is reaffirmed.

55. That unitization of the Hatter's Pond Field is in the interest of conservation, and secondary recovery will result in an appreciable increase in the recovery of hydrocarbons from said field. The increased recovery of hydrocarbons from the field is in the best interest of the mineral interest owners and the State of Alabama. Therefore, Finding 6 of Board Order 83-170 is reaffirmed.

56. That commencement of unit operations is necessary to prevent waste, to increase the recovery of hydrocarbons, and to protect the coequal and correlative rights of all the mineral interest owners.

SPECIAL FIELD RULES, UNIT AGREEMENT, UNIT OPERATING AGREEMENT, AND RATIFICATION AGREEMENT

Getty Oil Company submitted evidence that the Special Field Rules for the Hatter's Pond Field should be amended so as to address unit operations and submitted an amended set of Special Field Rules for the Hatter's Pond Field (Getty Exhibit 35, Docket No. 4-11-841).

Getty's witnesses testified that the proposed plan of unit operations in the Unit Agreement and the Unit Operating Agreement should be approved. Getty also requested that the form of the ratification agreement be approved.

The Board, in Order 83-170, found that Article 11.1 (Enlargement of the Unit Area and Unitized Formation), subparagraph (d) should be deleted from the final Unit Agreement. Subsequently, Getty revised said Unit Agreement to comply with Finding 41, Board Order 83-170.

Board Order 83-170 provided that the productivity factor in the participation formula shall be determined prior to the effective date of unit operations (Finding 16, Board Order 83-170). The Getty Hatter's Pond Unit Agreement provides in paragraph 5.1.2 that the productivity factor determination be made prior to the date the order is issued by the State Oil and Gas Board approving said agreement. George Radcliff contends that Paragraph 5.1.2 in Getty's proposed Unit Agreement is inconsistent with Finding 16 of Board Order 83-170. Radcliff maintains that adherence to Finding 16 of Board Order 83-170 is necessary to provide for a proper productivity factor assignment for Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

FINDINGS

After hearing all of the testimony and after carefully reviewing all the evidence pertaining to the proposed amendments of the Special Field Rules for the Hatter's Pond Field, to the Unit Agreement, to the Unit Operating Agreement, and to the form of the Ratification Agreement, the Board finds:

57. That the amended Special Field Rules for the Hatter's Pond Field, attached hereto as Exhibit D and made a part of this Order, are fair and reasonable, and should be adopted for unit operations.

58. That Getty Oil Company's proposal to determine the productivity factor for each tract prior to the date the order is

issued by the State Oil and Gas Board approving the Hatter's Pond Unit Agreement (Paragraph 5.1.2, Unit Agreement) is consistent with Finding 16 in Board Order 83-170. Finding 16 states that the productivity factor of the participation formula shall be determined prior to the effective date of unit operations. As stated in Finding 23 of this Order, the calculation of a tract's average daily production rate as determined from a well's best month of production on the tract through the last full month of production prior to the issuance of this Order, i.e. through September 30, 1984, protects the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit. Therefore, amended Exhibit B, as identified in Finding 23 of this Order, should be attached to and should become Exhibit "A" to the Unit Agreement and Unit Operating Agreement.

59. That the Unit Agreement and the Unit Operating Agreement, which are attached hereto as Exhibit E and Exhibit F, incorporate the provisions of Section 9-17-83 of the *Code of Alabama* (1975). Therefore, they should be adopted and made a part of this Order.

60. That the form of the Ratification Agreement, which is attached hereto as Exhibit G, should be approved and made a part of this Order.

DISCOVERY

Consideration of the need to form a unit in the Hatter's Pond Field for the purpose of, among other things, conducting secondary recovery operations in the field, has been before this Board since May 31, 1982, when Getty Oil Company filed a petition (Docket No. 7-1-821) with this Board for an order approving and establishing such a unit within the Hatter's Pond Field, Mobile County, Alabama. A hearing was scheduled on this petition for July 1, 1982, and a prehearing conference was held on June 21, 1982, which was attended by numerous parties interested in the Hatter's Pond Field. Thereafter, at the request

of Getty, the hearing on this petition was postponed (Board Order No. 82-127), and on July 20, 1982, Getty filed with this Board a revised petition (Docket No. 8-19-821) which was set for hearing on August 19, 1982. Prior to the first hearing on this petition, Hatters Alabama Company and Leboc Mobile Company responded to the Getty petition by proposing a plan of unitization in the Hatter's Pond Field that included property in addition to that included within the unit being proposed by Getty. At a special meeting of this Board held in Mobile, Alabama, on August 19, 1982, the hearing on the petition filed by Getty and on the proposal submitted by Hatters-Leboc was continued so that all parties owning interests in the Hatter's Pond Field could be advised of the fact that the Board was holding hearings to consider the need for unit operations.

Commencing on November 8, 1982, and continuing until July 1, 1983, this Board held thirteen days of hearings to consider the Getty petition and the various alternative proposals submitted by other parties participating in those hearings, including the proposal by Hatters-Leboc. During the course of the hearings in Docket No. 8-19-821, various requests for documents and information were filed by parties participating in those proceedings. The Board received some requests to issue subpoenas requiring Getty to produce certain documents and information. Other requests were informal in nature and were addressed to Getty with copies provided to the Board. No subpoenas were issued by the Board in response to the requests, because the Board was informed that Getty voluntarily produced the documents and information requested by the parties and therefore, no action was required by the Board.

During the hearings in Docket No. 8-19-821, all parties involved in those proceedings were given extremely broad rights of cross-examination and were allowed to call, as witnesses, all persons they desired to question concerning the matters before the Board. Only one request for a subpoena to a witness was filed during those proceedings, and that request, which was filed

by Hatters-Leboc, was rendered moot by the voluntary agreement of Getty to make available the witness in question.

In Board Order 83-170, which was issued at the conclusion of the hearings in Docket No. 8-19-821, the Board required that Getty, after complying with certain directives contained in said Order, expeditiously file with this Board a petition requesting the establishment of a unit in the Hatter's Pond Field consistent with the findings and directives in Board Order 83-170. On February 10, 1984, Getty filed with this Board a petition (Docket No. 4-11-841) as required by Board Order 83-170. Shortly thereafter, five additional petitions (Docket Nos. 4-11-842, 4-11-843, 4-11-844, 4-11-845 and 4-11-846A) were filed with this Board relating to the unitization *vel non* of the Hatter's Pond Field or of some portion thereof. All of the petitions (Docket Nos. 4-11-841 through 4-11-846A) were set down for a special hearing before this Board on April 11, 1984, and a pre-hearing conference was held on March 30, 1984. After the conclusion of the hearing on April 11, additional hearings were held on these petitions on June 29 and 30, on July 5, 6, 7, 12, 13, and 14, and on August 10, 1984. The Board on August 10, 1984 continued these hearings through September 10, 1984, for the submission of Briefs and proposed orders. On September 10, 1984 the Board voted to take petitions bearing Docket Nos. 4-11-841 through 4-11-846A under advisement.

On March 21 and 28 and on April 9, 1984, Arden A. Anderson, Dominex, Inc., et al. filed with this Board various requests asking, *inter alia*, that subpoenas be issued to Getty requiring that certain documents and information be furnished, that certain Getty personnel be made available for depositions, and that Anderson-Dominex be allowed broad rights of discovery. On June 19, 1984, Hatters-Leboc filed with this Board a request that the Board require Getty to produce certain books, papers, and records, and further that the requested documents be produced at the office of the Board in Tuscaloosa, Alabama. On June 20, 1984, AMAX Petroleum Corporation filed a request with the Board virtually identical to the request filed by Hatters-

Leboc but asking that the requested documents be produced either at the Board's office in Tuscaloosa, Alabama, or in the Getty offices in New Orleans, Louisiana.

During the course of these proceedings, Getty voluntarily complied with all of the above-mentioned requests except that Getty refused: (a) to provide Anderson-Dominex with accounting documents showing revenue received from the S.M. Adams 9-10 Well (Permit No. 2199) (an abandoned well), royalty payments made out of that revenue, and expenses incurred in connection with that well; (b) to provide Anderson-Dominex with studies of cores from wells in the Hatter's Pond Field made by Getty's research department; (c) to provide Anderson-Dominex with seismic data owned by Getty covering property in the southern portion of the Hatter's Pond Field (Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama); and (d) to provide Anderson-Dominex, Hatters-Leboc, and AMAX with copies of documents showing Getty's economic evaluation of wells in the Hatter's Pond Field. Although Getty Oil Company did not fully comply with the four requests, Getty advised the Board that it did respond to the requests by furnishing or making available for inspection, at Getty's offices in New Orleans, Louisiana, the following information: (a) documents showing all production obtained from the S.M. Adams 9-10 Well, all operations performed on that well, and the estimated costs of those operations; (b) the actual cores taken from the wells in the Hatter's Pond Field; (c) all geological data obtained from the wells in the Hatter's Pond Field; and (d) Getty's reserve estimates for each well in the field.

Witnesses for Getty testified that the information it refused to furnish to Anderson-Dominex, Hatters-Leboc and AMAX is highly confidential and related to Getty's exploratory efforts. Representatives for Getty also stated that the parties requesting this information were Getty competitors.

FINDINGS

After hearing all the testimony and after carefully reviewing all of the discovery requests and evidence, the Board finds:

61. That the participants in these unitization hearings (Docket Nos. 4-11-841 through 4-11-846A) who have requested that the Board issue subpoenas and grant other discovery rights were also parties to the proceedings in Docket No. 8-19-821, except for a few of the petitioners named in the petition filed by Arden A. Anderson, Dominex, Inc., et al. All of the participants in Docket No. 8-19-821 should have been aware that proposals other than the proposal of Getty Oil Company were before the Board at that time, because the notice of those proceedings specifically stated that the Board might adopt a unitization order in those proceedings different from that requested by Getty Oil Company.

62. That requests for discovery filed in Docket No. 8-19-821 were voluntarily complied with by Getty Oil Company and all parties involved in those proceedings were given full and complete rights to examine and cross-examine all witnesses in those proceedings and to call any persons as witnesses whom they desired to call.

63. That all participants in the hearings in Docket Nos. 4-11-841 through 4-11-846A were given full and complete rights to examine and cross-examine all witnesses who testified during those hearings and to call, as witnesses, any persons whom they desired to call. The only requests for subpoenas to require the presence of witnesses at the present proceedings were filed by Dr. Gerald Wallace on July 13, 1984, and subpoenas requiring the presence of those witnesses at these proceedings were issued on that same day. However, Dr. Gerald Wallace failed to obtain service of those subpoenas. Although one of the witnesses to whom those subpoenas were directed was present at the meeting held by this Board on July 14, 1984, counsel for Dr. Gerald Wallace advised the Board that he did not intend to call that individual as a witness.

64. That the Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it.

65 That voluminous amounts of information and data have been produced during these hearings (Docket Nos. 4-11-841 through 4-11-846A) and the previous hearings (Docket No. 8-19-821), and all parties involved in all of these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the unitization of the Hatter's Pond Field. Furthermore, all parties have had full opportunity to prepare and present their cases to the Board. The information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the Board.

66. That the discovery requests filed by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation were not filed in a timely manner and the granting of those requests would unduly delay the unitization of the Hatter's Pond Field.

67. That, although there are no formal discovery procedures set out in the regulations of the Board, the policy of the Board is to provide all parties before it with a full and fair hearing. The policy of the Board is not to deny reasonable requests for discovery; however, to the extent not already complied with, the discovery requests of Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED, AND DECREED BY THE STATE OIL AND GAS BOARD OF ALABAMA THAT:

1. The record in Docket No. 8-19-821 and the resulting Board Order 83-170 and the monthly production records which include full well stream production from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) through September 30, 1984, be made a part of the record in these proceedings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, and 4-11-846A).

IT IS FURTHER ORDERED THAT:

2. Board Order 83-170, which is attached hereto as Exhibit H, be made a part of this Order.

IT IS FURTHER ORDERED THAT:

3. The petition bearing Docket No. 4-11-841 filed by Getty Oil Company be granted, subject to the provisions of this Order.

IT IS FURTHER ORDERED THAT:

4. The petition bearing Docket No. 4-11-842 filed by Paul M. Brown, et al. be denied.

IT IS FURTHER ORDERED THAT:

5. The petition bearing Docket No. 4-11-843 filed by Hatters Alabama Company and Leboc Mobile Company be denied.

IT IS FURTHER ORDERED THAT:

6. The petitions bearing Docket Nos. 4-11-844 and 4-11-845 filed by Dr. Gerald Wallace be denied.

IT IS FURTHER ORDERED THAT:

7. The petition bearing Docket No. 4-11-846A filed by Arden A. Anderson, Dominex, Inc., et al. be denied.

IT IS FURTHER ORDERED THAT:

8. To the extent not already complied with, all requests for discovery, including those by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation be denied.

IT IS FURTHER ORDERED THAT:

9. The Hatter's Pond Field Unit as prosed by Getty Oil Company in Docket No. 4-11-841 shall be known hereafter as the Hatter's Pond Unit. The Unit Area (as shown on Exhibit C which is attached hereto and made a part of this Order) for the Unitized Formation more specifically described below in the Hatter's Pond Unit, Mobile County, Alabama consists of the following described area:

In Township 1 South, Range 1 West:

Southwest Quarter (SW $\frac{1}{4}$) of Section 27; South Half (S $\frac{1}{2}$) of Section 28; All of Sections 33, 34, and 35.

In Township 2 South, Range 1 West:

All of Sections 2, 3, and 4; Southeast Quarter (SE $\frac{1}{4}$) of Section 8; All of Sections 9 and 10; All of that part of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 11 lying West of the West right-of-way line of the St. Louis-San Francisco Railroad, and all that part of the West Half of the Southwest Quarter of the Northwest Quarter (W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 11 lying West of the West right-of-way line of the St. Louis-San Francisco Railroad; All of Sections 15, 16, 17, 21, and 28; That part of the Northwest Quarter (NW $\frac{1}{4}$) of Section 22 lying North and West of the West right-of-way line of Interstate Highway I-65.

10. The Unitized Formation shall be that portion of the subsurface underlying the Unit Area, containing porous and hydrocarbon productive Smackover-Norphlet Formation which is the stratigraphic equivalent of the interval between the Dual Induction - Laterolog depths of 17,988 feet and 18,429 feet in the Getty Oil Company - Peter Klein 3-14 Well No. 1 (Permit No. 1978), located in Section 3, Township 2 South, Range 1 West, Mobile County, Alabama, and shall also mean that portion of the subsurface underlying the Unit Area containing porous and hydrocarbon productive Smackover-Norphlet Formation which is the stratigraphic equivalent of the interval between the Dual Induction - Focused Log depths of 18,042 feet and 18,648 feet in the Getty Oil Company - Baldwin 21-15 Well No. 1 (Permit No. 3697), located in Section 21, Township 2 South, Range 1 West, Mobile County, Alabama or such other productive interval as may be ordered by the State Oil and Gas Board of Alabama.

11. All separate tracts, interests associated with tracts, and ownerships in the Unitized Formation in the Unit Area, including fee ownerships, mineral ownerships, royalty ownerships, oil and gas leasehold interests, and all other interests related to or carved out of any of the above, are hereby pooled, unitized and integrated as of the effective date of unitization. The owners of all of said tracts, interests and ownerships embraced within said Unit Area are hereby required to develop and operate their separately owned tracts and interests as a single unit consisting of the Unitized Formation for the production, development and operation of said lands as to said Unitized Substances in the Unitized Formation in such manner and to such effect as if all owners of said interests embraced within said Unit Area had voluntarily acquiesced in and agreed and consented to the unitization, integration, and pooling of said tracts and interests and in the manner and form as created.

12. The tract participation formula for the Hatter's Pond Unit shall be the formula consisting of the 60 percent pore

volume factor and the 40 percent productivity factor as enunciated in Finding 23 of this Order. Pore Volume is the acre feet of pore space in the Unitized Formation determined by multiplying the hydrocarbon bearing net pay (using cut-off points of 6% porosity and 0.1 millidarcy permeability) in the Unitized Formation by the average porosity of the net pay. The pore volume for each tract is as shown in the column labeled "Supervisor's Conference Consensus Map" on attached Exhibit A to this Order. Productivity is a tract's average daily production rate as determined from a well's best month of production on the tract through September 30, 1984, as reflected by the full well stream production as shown by the monthly production recodes from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells). Getty Oil Company shall redetermine the productivity factor assignment as described above for each tract and shall recalculate the tract participation for each tract. Getty then shall prepare an amended Exhibit B, which includes the pore volume assignment for each tract (shown on attached Exhibit A, in the column labeled "Supervisor's Conference Consensus Map"); a tabulation of the productivity assignment for each tract; and the tract participation for each tract based on the 60 percent pore volume factor as shown on attached Exhibit A and the 40 percent productivity factor as described above. Getty shall submit an amended Exhibit B to the Board within 15 days of the issuance of this Order. Upon approval, amended Exhibit B shall then be the replacement for attached Exhibit B and amended Exhibit B shall be attached to and made a part of this Order.

13. The Unit Agreement, attached hereto as Exhibit E, and the Unit Operating Agreement, attached hereto as Exhibit F, are hereby approved and made a part of this Order. Upon approval, amended Exhibit B to this Order shall become Exhibit "A" to the Unit Agreement and Unit Operating Agreement and amended Exhibit B to this Order shall be attached to and made a part of the Unit Agreement and Unit Operating Agreement.

14. All operations in and production of Unitized Substances from the Unit Area and the Unitized Formation shall be governed by the terms of this Order and the terms of the Unit Agreement and the Unit Operating Agreement.

15. Getty Oil Company is appointed as Unit Operator. All operations shall be conducted by the Unit Operator in accordance with the terms and provisions of the Unit Agreement and Unit Operating Agreement, and the selection of a successor to the Unit Operator, designated by the Board, shall be governed by terms of the Unit Agreement and Unit Operating Agreement.

16. After the effective date of unitization of the Unit Area and Unitized Formation, the Unit Operator shall commence a program of pressure maintenance operations consisting initially of gas cycling through injection wells drilled into the Unitized Formation.

17. From and after the effective date of unitization of the Unit Area and Unitized Formation, all production of Unitized Substances obtained from all wells completed in the Unitized Formation in the Unit Area, and not required in the conduct of Unit Operations or unavoidably lost, shall be allocated among the various tracts or interests derived from or associated with tracts in the Unit Area in accordance with the participation formula. Said allocation of production in accordance with the tract participations (as to be shown on amended Exhibit B) using the participation formula is based upon the relative contribution which each tract or interest is expected to make during the course of Unit Operations to the total production of the Unitized Substances so allocated, pursuant to and as provided for by the terms and provisions of the Unit Agreement, including, but not limited to, Articles 5 and 6 thereof. If any of the Oil and Gas Rights in any tract is now or hereafter becomes divided and owned in severalty as to different parts of the tract, the owners of the divided interest, in the absence of an agreement providing for a different division, shall share in the Unitiz-

ed substances allocated to such a tract or interest or in the proceeds thereof, in the proportion that the surface acreage of their respective parts of such tract bears to the surface acreage of the entire tract. The portion of unit production so allocated to each separately owned tract or interest therein within the Unit Area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to the Unitized Formation within the Unit Area shall be deemed, for all purposes, to be the conduct of operations for the production of Unitized Substances from and on each separately owned tract in the Unit Area.

18. From and after the effective date of unitization of the Unit Area and Unitized Formation, an adjustment shall be made among the owners of the Unit Area (not including royalty or overriding royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to unit operations and the amount to be charged to unit operations for any such item shall be determined by the owners of the Unit Area (not including royalty or overriding royalty owners); provided, however, if said owners of the said Unit Area are unable to agree upon the amount of such charges, or to agree upon the correctness thereof, this Board shall determine them after due notice and hearing upon application of any interested party and the net amount charged against the owner of a separately owned tract or interest shall be considered expense of the Unit Operations chargeable against such tract or interest.

19. From and after the effective date of unitization of the Unit Area and Unitized Formation, the cost and expenses of unit operations, including investment, past and prospective, shall be charged to the separately owned tracts or interests in the same proportions that such tracts or interests share in unit production, and said costs and expenses shall be borne and/or paid by the Working Interest Owners (as defined in the Unit Agreement) as provided for in Article 11 of the Unit Operating Agree-

ment. In the event the Unit Operating Agreement or other agreement entered into by the owners of the Unit Area (not including royalty owners) provides for a different method of allocating costs and expenses for unit operations, then as to such parties signatory to such agreement, the provisions of such agreement shall govern and apply.

20. From and after the effective date of unitization of the Unit Area and Unitized Formation, when the full amount of any charge made against a separately owned tract or interest is not paid when due by the person or persons primarily responsible therefor, as provided in Section 9-17-83(5) *Code of Alabama* (1975), then seven-eighths (7/8) of the Unitized Substances allocated to such separately owned tract or interest may be appropriated by the Unit Operator and marketed and sold for the payment of such charge, together with interest at the rate of five percent (5%) per annum thereon. A one-eighth (1/8) part of the unit production allocated to each separately owned tract or interest shall in all events be regarded as royalty to be distributed to and among or the proceeds thereof paid to the royalty owners, free and clear of all unit expense and free and clear of any lien therefor. The owners of any overriding royalty, oil and gas payment, royalty in excess of one-eighth (1/8) of production, or other interest, who are not primarily responsible therefor shall, to the extent of such payment or deduction from his share be subrogated to all of the rights of the Unit Operator with respect to the interest or interests primarily responsible for such payment. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted in the proportion of their respective interests. The Unit Operator shall have such other rights provided in Article 11 of the Unit Operating Agreement.

21. That the Special Field Rules heretofore promulgated by this Board, as amended to include unit operations in the Hatter's Pond Unit (attached hereto as Exhibit D), are hereby approved and made a part of this Order and shall become effec-

tive on the date upon which unit operations, the Unit Agreement and Unit Operating Agreement become effective.

22. From and after the effective date of unitization of the Unit Area and Unitized Formation, operations shall continue so long as Unitized Substances are thereafter produced in paying quantities or so long as other Unit Operations are conducted without cessation of more than 90 consecutive days unless sooner terminated by Working Interest Owners in accordance with the provisions of the Unit Agreement. A determination by the Working Interest Owners that Unitized Substances can no longer be profitably or feasibly produced from the Unit Area shall be effective to terminate the Unit Agreement as of the date that the Unit Operator files a certificate in the Probate Court of Mobile County, Alabama to the effect that said determination has been made. Upon termination of the Unit Agreement the further development and operation of the Unitized Formation as a unit shall be abandoned and Unit Operations shall cease.

23. The form of the Ratification Agreement which is attached hereto as Exhibit G is hereby approved and made a part of this Order.

24. This Order requiring unit operations shall not become effective unless and until agreements incorporating the provisions of Section 9-17-83 of the *Code of Alabama* (1975) have been signed or in writing ratified or approved by the owners of at least 75 percent in interest as costs are shared under the terms of this order and by 75 percent in interest of the royalty and overriding royalty owners in the Unit Area and the Board has made a finding to that effect in a supplemental Order. In the event the required percentage interests have not signed, ratified or approved the Order or said agreements within six months from and after the date of such Order it shall be automatically revoked.

This cause came on for hearing before a quorum of the board consisting of The Honorable Ralph W. Adams, The Honorable

Henry A. Leslie and The Honorable Gaines C. McCorquodale. The Honorable Ralph W. Adams, The Honorable Henry A. Leslie, and the Honorable Gaines C. McCorquodale were present through these hearings, Docket Nos. 4-11-841 through 4-11-846A, with the exception that the Honorable Henry A. Leslie was absent from these hearings for a brief period of time and read that portion of the record covering the period of this absence. The Honorable Ralph W. Adams, The Honorable Henry A. Leslie, and the Honorable Gaines C. McCorquodale heard the testimony of all witnesses, the arguments of Counsel, and examined the documentary evidence adduced at these proceedings, Docket Nos. 4-11-841 through 4-11-846A. Further, The Honorable Ralph W. Adams and the Honorable Henry A. Leslie have read the record in Docket No. 8-19-821.

ORDERED this 9th day of October, 1984.

STATE OIL AND GAS BOARD OF
ALABAMA

By /s/ Dr. Ralph Adams, Chairman

By /s/ Henry A. Leslie, Member

By /s/ Gaines C. McCorquodale, Member

ATTEST:

/s/ Ernest A. Mancini, Secretary

APPENDIX D

[Civ. 5403-X — Corrected on Rehearing]

...the pore volume factor that comprises sixty percent of the formula. Anderson maintains that without an adjustment to pore volume based on the remaining recoverable reserves left in a tract, the participation formula will have no reasonable relation to each tract's expected contribution to future unitization. Anderson then advocates conducting bottom hole pressure tests for determining these remaining recoverable reserves. Anderson contends that it is "elementary" that the amount of pressure in a container is indicative of the amount of gas in it.

The Board, however, rejected this argument and found that conducting bottom hole pressure tests was both unnecessary and unwarranted. O'Dell, a Getty expert, testified that seven years of production and pressure in Hatter's Pond made additional bottom hole pressure tests useless. O'Dell, adopting a position advocated by Exxon, also testified that too much pressure variation existed for the tests to be reliable, and they would not prove the existence of separate reservoirs within the field. More importantly, the evidence indicated that this type of testing was of value only if Hatter's Pond consisted of more than one reservoir.

We have already pointed out that the Board determined Hatter's consisted of one reservoir and that such a determination was reasonable. An expert for appellees testified that the Board formula was appropriate if Hatters' were one reservoir. Thus, appellees' own expert supports the Board's refusal to make any adjustment to pore volume based on remaining recoverable reserves.

Based on the evidence and the guiding standard of review, we reverse the order of the circuit court and remand it for the entry of an order affirming the orders of the Oil and Gas Board.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Wright, P.J., and Holmes, J., concur.

APPENDIX E

THE STATE OF ALABAMA — JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

July 17, 1987

86-719

EX PARTE: ARDEN A. ANDERSON

PETITION FOR WRIT OF CERTIORARI

(Re: State Oil and Gas Board of Alabama v. Arden A. Anderson, et al.)

CIV 5403-X

**CERTIFICATE OF JUDGMENT
WRIT DENIED**

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

MADDOX, J. — TORBERT, CJ., ALMON, HOUSTON AND STEAGALL, JJ. CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of July, 1987.

/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama